

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
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COMMITTEE ON JUDICIARY
January 20, 2005
LB 81, 115, 200, 260, 100, 112

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 20, 2005, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 81, LB 115, LB 200, LB 260, LB 100, and LB 112. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Ernie Chambers; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: None.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is the second day of our hearings. We're hearing six bills today. The members of the committee, Senator Flood to my left from Norfolk; Senator Friend from the Omaha area; Senator Aguilar from Grand Island. The committee clerk is Laurie Vollertsen. I'm Pat Bourne from Omaha. Legal counsel is Jeff Beaty; Senator Ernie Chambers from Omaha; and Senator Jeanne Combs from Friend, Nebraska. Again, we're going to hear six bills today so it's a fairly packed agenda. We have two chairs up front here designated as the on-deck chairs. Please use those if you intend to testify. Make your way forward to those chairs. We'll be taking testimony. The introducer will have five minutes, then the proponents, then opponents, and then neutral testifiers. When you come forward to testify, again, you're going to use the on-deck chairs and you're going to sign in. And then when you come forward to testify, please state your name for the record and spell your name even if it's a common name such as Senator Baker. All the hearings are transcribed so we'll need the spelling for the transcriber. As you can see, we're using the Kermit Brashear memorial lighting system (laughter). The introducer gets five minutes and every testifier thereafter gets three minutes. And given the number of bills that the Judiciary Committee is hearing, I will cut you off after three minutes. And I appreciate your helpfulness in respecting the time constraints. Cell phones are not allowed in legislative hearing rooms. If you have a cell phone please disable it. We will allow testimony to be submitted on bills from other individuals but we won't allow that testimony to be read into the record. We've been joined by Senator Mike Foley from Lincoln and the Vice Chairperson of the committee, Senator Dwite Pedersen from Elkhorn. I think that's the extent of our housekeeping issues. We're going to open the hearing on

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LB 81, Senator Baker.

LB 81

SENATOR BAKER: (Exhibits 1, 2, 3) Thank you, Chairman Bourne and members of the committee. I am Tom Baker spelled B-a-k-e-r, represent District 44 of the Legislature and I'm here to introduce LB 81. This bill has typically gone to the Transportation Committee so I thought maybe a change of faces would speed it up a little bit going through Judiciary so I had no problem with this. Friendly group I understand. LB 81 is a very straightforward bill. It allows undercover license plates to be issued to federal agencies. Right now we...if you follow along here, we offer undercover plates to state, county, city, and village law enforcement agencies and shall be used and so on. And they are used in the state of Nebraska. There's two sections to the bill, the undercover license plates, Section 60-304 and then the second section which I will not repeat but it's dealing with undercover drivers' licenses. We'll concentrate on the plates to begin with. The process for the committee is very direct and to the point. It says the Director of Motor Vehicles shall prescribe a form for agencies to apply for undercover license plates. The Director of Motor Vehicles does this now, as I say, for all these other agencies, law enforcement, and so on. All we're doing is adding federal agencies to the process. Once they apply, that application has to include the name and signature of a contact person for that agency, in this case, the federal agency is what we're talking about here, on the form and pay the fee. It's the same registration fee as anyone else would pay and upon receipt of this completed form or application for this undercover plate, the Director of the Department of Motor Vehicles, in this case, Bev Neth, has to examine this application and rule that, yes, it's an order and warranted and the specific uses and so on. And the second section of the bill on page 4 simply repeats basically the same process only it's for the driver's license, the undercover driver's license. But that's what's in place now for all these other agencies that are able to access undercover plates, apply to the Department of Motor Vehicles, Director rules upon this. If deemed a valid application and they fulfill all the obligations then they issue the plates. And there are in the statutes...they have to turn in the plates and so on and

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et cetera. And, obviously, the need for this is...and I represent a very rural district. We have more and more meth cases out there. And it's obvious to me when somebody...they have an investigation going that if the federal people and they so often cross state lines are out there helping our local authorities, and they have been in the past. That any time even an out-of-county license plate shows up in a rural county, it's rather obvious. And it tends to compromise the investigation and also it's a safety issue to those people that are working the particular case out there. When somebody, and as I said, you know, small rural county when somebody without a 67 county plate drives in say from 46 county, they're obviously a stranger and you recognize that. So it compromises the investigations without this and it's also a safety factor to the various people working on it. With that, I'd be glad to answer any questions.

SENATOR BOURNE: Thank you. Before proceeding, I have in my possession a letter from United States Marshal Brian Ennis, the letter in support of LB 81. We'll enter that into the record. Thank you, Senator Baker. Are there questions for Senator Baker? Senator Chambers.

SENATOR CHAMBERS: Senator Baker, how many federal agencies would be authorized to have these plates and these drivers' licenses?

SENATOR BAKER: I don't know an exact number but I can think of several, obviously, the FBI, the Secret Service, Fish and Wildlife, U.S. Fish and Wildlife, drug enforcement,...

SENATOR CHAMBERS: And the IRS.

SENATOR BAKER: ...IRS...

SENATOR CHAMBERS: Veterans Administration.

SENATOR BAKER: There's a number of them.

SENATOR CHAMBERS: Okay. In fact, every federal agency would be allowed to get these license plates.

SENATOR BAKER: They could make application. They wouldn't necessarily automatically get them, wouldn't be granted.

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The Director of Department of Motor Vehicles has to approve them. I'm...

SENATOR CHAMBERS: Well, why was no winnowing... Which agencies might the Department of Motor Vehicles turn down?

SENATOR BAKER: They could turn down any of them if they didn't have just cause for an undercover plate. I don't know which they would be more likely to turn down. I don't know.

SENATOR CHAMBERS: Well, fish and wildlife, what kind of undercover work will they be doing?

SENATOR BAKER: Oh, in a case of bald eagles and federally, you know, endangered species I know that they've had some investigations on those and Sandhills cranes, whooping cranes, for instance. Those kind of investigations I know are ongoing nearly every season, every year.

SENATOR CHAMBERS: What have these investigations disclosed?

SENATOR BAKER: Well, in some cases it's who may have taken the life of a whooping crane or trapped something or other that they shouldn't have.

SENATOR CHAMBERS: So they were able to conclude those investigations without undercover plates or undercover drivers' licenses, weren't they?

SENATOR BAKER: They have. I'm assuming they have anyway. They may disagree with me but I think it would probably behoove the investigation. If they didn't have a federal plate on there and they were out checking someone, say in a blind or something like that.

SENATOR CHAMBERS: Why didn't you do any winnowing yourself and restrict the sweep of this bill as far as the federal agencies?

SENATOR BAKER: I don't know that I would want to. You know, Fish and Wildlife has a need for it, U.S. Fish and Wildlife we're talking about here has a need for it. I wouldn't want to deny them. If they can justify to the Department of Motor Vehicles that there's a need then she

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can issue that undercover plate.

SENATOR CHAMBERS: Senator Baker, do these federal agents conduct investigations in cooperation or conjunction with state and local law enforcement offices?

SENATOR BAKER: I believe they do, yes.

SENATOR CHAMBERS: They could not make use of a vehicle that one of these agencies has?

SENATOR BAKER: My first impression there would be liability issues, whose vehicle was it, and make sure that it was legally registered and so on, if a federal agent was in someone else's vehicle.

SENATOR CHAMBERS: But they could do that, couldn't they?

SENATOR BAKER: I imagine they could. I don't know...

SENATOR CHAMBERS: But you want us to change the law for the federal government's convenience, is that true?

SENATOR BAKER: Yes, so that they can access the same plates and drivers' licenses our state officials can.

SENATOR CHAMBERS: Are you aware that the federal government has a policy of circumventing the statutory and constitutional laws of this state?

SENATOR BAKER: I'm not aware of that.

SENATOR CHAMBERS: There is a bill and I'm aware of it because I helped get it through the Legislature which prohibits the use of people on parole, in the lockup, wherever, on probation, or any other type of custody as a snitch, an undercover agent. The federal government has tried to get involved because they feel they're not bound by the state law. And they work with the State Patrol on an investigation and when the matter went to the state Supreme Court, the federal government and the patrol tried to say, well, these snitches were working under the auspices of the federal government and, therefore, would not be bound by Nebraska law. The Supreme Court pointed out that the involvement of the state was such that the state law did

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apply. What respect for the law of the state is manifested when the federal government deliberately attempts and local law enforcement goes along with it and they conspire to do this, to circumvent Nebraska's law? What respect is being shown for the law in a case like that?

SENATOR BAKER: I'd say it's a lack of respect but I'm not aware of these cases. Perhaps you are.

SENATOR CHAMBERS: I will get you the Supreme Court case. I handed you a copy of a provision from the Nebraska Constitution. I didn't want you to be caught off-base without having what I intend to touch on and ask you a question or two about. This is from Article VIII, Section 5 of the Nebraska Constitution. Subsection 2 of Section 5 says, "Fifty percent of all money forfeited or seized pursuant to enforcement of the drug laws shall belong and be paid over to the counties for drug enforcement purposes as the Legislature may provide." Subsection 3, "Law enforcement agencies may use conveyances forfeited pursuant to enforcement of the drug laws as the Legislature may provide. Upon the sale of such conveyances, the proceeds shall be appropriated exclusively to the use and support of the common schools as provided in subsection 1 of this section." That provision was proposed as an amendment to the Constitution in 1984 and I'm saying this for the record, pursuant to LR 2CA introduced by Senator Carol Pirsch and others. Six people voted against that proposal. I was one of the six so I'm familiar with this. Do you think that it fosters respect for the law when the federal...first of all, let me ask you a question. Are you aware of the fact that rather than having local law enforcement forfeit, conduct forfeiture activities under the state Constitution, the federal government, once again, has allowed them to use the auspices of the federal government to circumvent the Nebraska Constitution. Are you aware of that?

SENATOR BAKER: I'm aware of that.

SENATOR CHAMBERS: So, you are coming here asking the Legislature to do a favor to the government that is in the process not only itself of circumventing the Constitution and laws but corrupting, in my view, local and state and county law enforcement officials who swear to uphold the law of Nebraska to also join them in circumventing the law and

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the Constitution of this state. You're really asking us to do a favor for the federal government knowing what they're engaged in as far as circumvention of our laws. Is that correct?

SENATOR BAKER: I don't think that's their policy, circumventing the state laws. I'm...you say you'll...

SENATOR CHAMBERS: Well, they can call it whatever they want to but what occurs when forfeitures take place within the boundaries of Nebraska and a deliberate decision is made and encouraged by the federal government to forfeit pursuant to federal law. Then none of the proceeds go to the common schools as the Nebraska Constitution says but rather to the law enforcement agencies and they keep it all. Isn't that circumventing what this constitutional provision envisions?

SENATOR BAKER: I think it depends on the circumstances of the case, doesn't it? I...it's not an area of expertise I have. I'm not a lawyer. But I understand they have the option, if you will, whether it's the federal statutes or the state statutes and they are different, obviously, as to forfeiture.

SENATOR CHAMBERS: Why should it be necessary for a senator when we have a clear provision of the Constitution such as this to offer legislation because we cannot trust state law enforcement. And the legislation would say, local, state, and county law enforcement officers shall not participate with the federal government in the forfeiture of any drug proceeds or conveyances which but for they're going through the federal government would be governed by the Nebraska Constitution? Why should I have to offer a bill like that when the Constitution makes it clear what the policy of this state is?

SENATOR BAKER: In answer to your question, I don't know how often they use the federal guidelines rather than state. I don't know but...

SENATOR CHAMBERS: Well, let's say they do it once. How many times would I have to kill somebody before I'm a murderer?

SENATOR BAKER: Once.

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SENATOR CHAMBERS: How many times would I have to rob a bank before I'm a bank robber?

SENATOR BAKER: Once.

SENATOR CHAMBERS: How many times does the federal government and these local agencies have to circumvent our constitution before they are circumventers of our constitution?

SENATOR BAKER: Once.

SENATOR CHAMBERS: And do you think that the local law enforcement people and when I say local I'm including the State Patrol, the county and the cities so I don't have to keep saying all three. Do you think they go along with this because it enables them to keep all of the proceeds rather than half of it having to go to support education which I presume means something to you?

SENATOR BAKER: I think...I'm assuming now that they're going to have someone testify in support of this other than a federal agency. But in western Nebraska I know that there are cases...obviously across state lines and federal people are involved with those investigations just...some of them I'm sure more heavily than the state people. And they work in conjunction with each other so...

SENATOR CHAMBERS: If a person is arrested in Nebraska, where is that person going to be tried?

SENATOR BAKER: It's where the crime...well, if they're arrested in Nebraska?

SENATOR CHAMBERS: Yes.

SENATOR BAKERS: Depends where the crime is committed, I believe.

SENATOR CHAMBERS: Well, if the person is transporting drugs, is the crime being committed wherever that person is found with the drugs?

SENATOR BAKER: Yes.

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SENATOR CHAMBERS: If a person is arrested in Nebraska with drugs and drug money, where would the trial take place?

SENATOR BAKER: Nebraska.

SENATOR CHAMBERS: And if there's a forfeiture and the Nebraska Constitution came into play, half of that money would go to support the schools, wouldn't it?

SENATOR BAKER: Yes.

SENATOR CHAMBERS: Do you favor the schools getting this money?

SENATOR BAKER: I think it...yes, I do. I think it's appropriate.

SENATOR CHAMBERS: Did you, when you took your oath, swear to uphold the Constitution and laws of the state?

SENATOR BAKER: Yes, yes, I did.

SENATOR CHAMBERS: So why will you cooperate with the government which is blatantly and brazenly violating our constitution and laws? Circumventing our constitution and laws? Why will you do that?

SENATOR BAKER: Once again, you're out of my area of expertise but I don't think they're blatantly circumventing the laws. They're prosecuting some of these crimes under federal, you know. They're not state because of...and you can, you know better than I do why. I know there's different penalties and forfeitures involved and so on.

SENATOR CHAMBERS: Well, now that the U.S. Supreme Court has brought a little sanity and equity into sentencing, do you think there might be less inclination by these federal attorneys to prosecute under the federal law...

SENATOR BAKER: They might.

SENATOR CHAMBERS: ...because sentences can now be appealed, even those that have been handed down perhaps and that will totally clog the federal court system.

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SENATOR BAKER: It might. It certainly, I would think, would have some effect on it, yes.

SENATOR CHAMBERS: And with that happening, the clogging of the federal court system, currently you can't appeal the sentence. With that happening, do you think that the Attorney General of the United States under some public criticism by the federal courts and politicians being very sensitive to public reactions, would stop clogging the federal courts with a lot of these drug crimes that ought to be prosecuted under state law?

SENATOR BAKER: I don't know. I don't know. We'll have to see.

SENATOR CHAMBERS: Are you aware...is there somebody from the federal government who's going to testify on your bill?

SENATOR BAKER: Yes, Senator.

SENATOR CHAMBERS: I'll wait for that person then. That's all I will ask you but I wanted to give them a heads-up.

SENATOR BAKER: Okay.

SENATOR BOURNE: Thank you. Further questions for Senator Baker? Seeing none, thank you.

SENATOR BAKER: Okay. Thank you.

SENATOR BOURNE: As the next proponent makes their way to the witness stand I wanted to announce that from time to time senators might be leaving the hearing room to go introduce other bills. And, hopefully, you won't take offense to that. Welcome to the committee.

GINA PALOKANGAS: Hi, my name is Gina, G-i-n-a, Palokangas, P-a-l-o-k-a-n-g-a-s and I'm with the Federal Bureau of Investigation. Thank you. I'd like to thank the Judiciary Committee for the opportunity to speak on behalf of our agency as far as the proposed legislation. As Senator Baker mentioned, currently, we are unable to get undercover license plates and drivers' licenses within the state of Nebraska. And this has oftentimes hampered our

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effectiveness in our investigations as well as, more importantly, providing a huge officer safety issue for our agents. As the committee, I'm sure, is well aware people who commit crimes have an interest in knowing who law enforcement people are. They're always trying to determine whether or not they're under surveillance, whether or not people that they are committing crimes with are actually undercover officers. And they do make attempts to try to determine the true identity of the person. Oftentimes and I can't say with what frequency, but make attempts to possibly corrupt people who have access to that type of information, Department of Motor Vehicle information and other law enforcement agencies who have access to that information in an attempt to determine the true identity. And so if...when we have agents working criminal matters out on the street, it's important for them to be able to conceal their identity as an FBI agent. And I would think that would go for all the other federal law enforcement agencies. It's a huge officer safety issue. If an agent is out doing surveillance and they are found out by someone who is participating in criminal activity it has happened in the past where they may take action against that person. So that's the officer safety. The other thing I wanted to point out is that this legislation not only benefits federal agencies but it would also benefit our state and local law enforcement partners. We do work in conjunction with many state, county, local law enforcement agencies in working joint investigations whether they be drug investigations, terrorism investigations, organized crime investigations. And so it's an issue for them as well if they're participating in an actual law enforcement investigation and someone working for the federal government is determined to be actually an employee of the federal government. And that's...

SENATOR BOURNE: Okay. Thank you. Are there questions?
Senator Chambers.

SENATOR CHAMBERS: Welcome to the Judiciary Committee.

GINA PALOKANGAS: Thank you.

SENATOR CHAMBERS: You're a prosecutor, aren't you?

GINA PALOKANGAS: I am not a prosecutor.

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SENATOR CHAMBERS: Okay. Is somebody here who is a prosecutor for the federal government that you know of?

GINA PALOKANGAS: I don't think so.

SENATOR CHAMBERS: Why were you selected to come present this testimony to us rather than somebody from the prosecutor's office if you know?

GINA PALOKANGAS: I would assume, my position is chief division counsel so I am a legal adviser within our office but I am not a prosecutor.

SENATOR CHAMBERS: So you do not participate in activities in the field that relate to undercover work?

GINA PALOKANGAS: I'm a special agent so my current position does not require me to do that but I am authorized to participate in investigations as a special agent. I've done it in the past and anticipate I would probably also in the future.

SENATOR CHAMBERS: Did you do any such work in Nebraska?

GINA PALOKANGAS: No.

SENATOR CHAMBERS: What state did you do it in?

GINA PALOKANGAS: California.

SENATOR CHAMBERS: Did you have undercover license plates in California?

GINA PALOKANGAS: Yes.

SENATOR CHAMBERS: Pursuant to the state law?

GINA PALOKANGAS: Yes.

SENATOR CHAMBERS: You had said since you've worked someplace else, you may not have been referring to Nebraska, that action has been taken against agents who were involved in, I guess, undercover work.

GINA PALOKANGAS: Well, agents in general, if they're

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conducting a surveillance operation is considered to be undercover because the person that you're surveilling you don't want them to know that you are a law enforcement agency. We had...one of our agents was killed doing a surveillance in Washington, D.C. when they were surveilling a...

SENATOR CHAMBERS: But I'd like to talk about Nebraska.

GINA PALOKANGAS: Okay.

SENATOR CHAMBERS: When these FBI agents are surveilling, they don't wear suits and neckties anymore, do they?

GINA PALOKANGAS: They wear regular street clothes like anyone else would.

SENATOR CHAMBERS: So what would that consist of? Would it be a sweatshirt and jeans such as I wear?

GINA PALOKANGAS: Whatever they decide to wear and whatever is appropriate for the investigation.

SENATOR CHAMBERS: Well, as legal counsel I'm sure you're aware of what generally is worn by the agents when they conduct undercover investigations. Is that true or not?

GINA PALOKANGAS: That's true.

SENATOR CHAMBERS: If somebody were investigating white collar crime they would dress in white collar clothes, right? So they wouldn't stick out like a sore thumb. Or would they dress like a janitor so that they can be an invisible person and people will speak in front of somebody dressed like a janitor.

GINA PALOKANGAS: The obvious purpose is to blend in and not to stick out, yes.

SENATOR CHAMBERS: And they would want to blend in with the menial workers or with those they are trying to entrap or ensnare?

GINA PALOKANGAS: I don't know where you're going with this line of questioning. I...

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SENATOR CHAMBERS: You don't have to know if you just answer the questions.

GINA PALOKANGAS: Well, I don't know how you want me to answer the question as far as...

SENATOR CHAMBERS: I want you to answer it honestly as you think it ought to be answered, not what you think I want you to say.

GINA PALOKANGAS: Right. What I'm saying is I didn't understand the meaning of your question. They would wear whatever they could wear to blend in.

SENATOR CHAMBERS: Has...

GINA PALOKANGAS: And it just depends...I don't...it just depends on the investigation.

SENATOR CHAMBERS: When you were out in the field, were you aware of any of your fellow agents investigating white collar crime or the mob and their attire was the same as that of the people they're investigating?

GINA PALOKANGAS: Sometimes it was...

SENATOR CHAMBERS: Expensive suits, neckties, and so forth.

GINA PALOKANGAS: Sometimes it was and sometimes it wasn't. It all just depends.

SENATOR CHAMBERS: Okay. Now in Nebraska, how many cases are you aware of which could not be carried through to fruition as far as the surveillance because the agents did not have undercover license plates?

GINA PALOKANGAS: I'm not in a position to go into numbers as far as how many cases have been affected. I can just say as a general matter, it has affected our ability to conduct investigation in criminal matters.

SENATOR CHAMBERS: How do you know that since you don't know how many? Do they tell you we couldn't carry out this investigation because we didn't have license plates?

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GINA PALOKANGAS: Sometimes we decide not to pursue an area of investigation because we do not have undercover license plates and we choose not to put our agents in that position.

SENATOR CHAMBERS: But what you do is use an alternative methodology where license plates are not needed. Isn't that correct?

GINA PALOKANGAS: We would do whatever we could to further the investigation with the resources that we have.

SENATOR CHAMBERS: Let me see if I can get a more direct answer. If you are...and when you say you I meant the agency, trying to catch a malefactor, a bad actor. And part of the surveillance would take place in a vehicle but since you don't have undercover license plates that would be out. Are you telling me that that would terminate the investigation and this man would go free because you didn't have undercover license plates?

GINA PALOKANGAS: No, I'm not claiming that at all. I'm saying that our effectiveness is hampered by it. We may still be able to use other investigative means to accomplish obtaining proof or evidence that a person has committed a crime. But sometimes we may be able to do it sooner if we were able to use undercover license plates and drivers' licenses.

SENATOR CHAMBERS: Counselor, you're aware of the large number of drug prosecutions in the Nebraska federal district, aren't you?

GINA PALOKANGAS: I'm aware that there are many, yes.

SENATOR CHAMBERS: Are you aware that there is a greater number in the district of Nebraska than any other federal district in the country? Would that shock you to hear that?

GINA PALOKANGAS: I have no information on that so I don't know anything about that.

SENATOR CHAMBERS: Would it shock you to hear that?

GINA PALOKANGAS: Not necessarily. Every district within

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the country is different and some other states...state and local agencies have spent more resources on drug crimes. And I think it also depends on what the penalties are. And the respective systems is to determine where that case is prosecuted, whether it be state or federal.

SENATOR CHAMBERS: Are you aware of a practice by the federal government to make use of people as snitches who could not be used in that role under Nebraska law by a Nebraska law enforcement officer? Are you aware of that happening?

GINA PALOKANGAS: I'm aware that the federal government is able to use people as cooperating witnesses or informants.

SENATOR CHAMBERS: Are you aware that it happens in Nebraska?

GINA PALOKANGAS: I'm not personally aware of it, no since I don't work cases in Nebraska right now but I can see a situation where we would use, under our rules in a federal prosecution we are allowed to do that.

SENATOR CHAMBERS: Are you aware that forfeiture...you said you're a lawyer, right?

GINA PALOKANGAS: Yes.

SENATOR CHAMBERS: Okay. So you know what forfeiture is.

GINA PALOKANGAS: Yes, I do.

SENATOR CHAMBERS: Are you aware that the federal government has encouraged...let me not use that. You might feel that's a loaded question which you'd rather not answer as I pose it. Are you aware that the federal government works with local law enforcement agencies to carry out forfeitures and a percentage of the money is kept by the federal government naturally but the lion's share goes to state...let me say local and that would include local, state, and county? That the remainder goes to local law enforcement and they don't have to share it with the public schools, are you...?

GINA PALOKANGAS: I'm not aware of what Nebraska's forfeiture statutes are. I am aware that we oftentimes do

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what's called an adoptive forfeiture where we will do a forfeiture at the request of a state or a local agency.

SENATOR CHAMBERS: Oh, so they request that you do it?

GINA PALOKANGAS: Sometimes they do, yes.

SENATOR CHAMBERS: They are charged with knowledge of the law of this state, aren't they, since they swear to uphold it?

GINA PALOKANGAS: We can only do forfeitures if there's a violation of federal law. So then, again, it's a determination of whether or not to do it under the state or under the federal. But we can only do it for certain statutes that are authorized under federal law. We can't do it for most state offenses but if it's an offense that's also a federal offense, we can do a forfeiture under the federal laws.

SENATOR CHAMBERS: Well stated, counselor. Now I'll ask you the question. Forfeitures do occur pursuant to the federal methodology at the request of local law enforcement, isn't that true?

GINA PALOKANGAS: Sometimes, yes.

SENATOR CHAMBERS: Are they suggesting, if you know, that federal personnel are more competent in doing this than they are?

GINA PALOKANGAS: I have no idea what their...why they ask us to do it. I just know that sometimes we do forfeitures if there's a violation of federal law.

SENATOR CHAMBERS: There is no federal police force, is there?

GINA PALOKANGAS: Well, there's different federal law enforcement agencies.

SENATOR CHAMBERS: But there's no federal police force, is there?

GINA PALOKANGAS: Not really, I don't think so. I don't...

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SENATOR CHAMBERS: I know so.

GINA PALOKANGAS: Okay.

SENATOR CHAMBERS: So I've helped improve your education but I'm not going to charge you. But here's...I say that because I want to get to something. There would not be enough federal employees to enforce the laws of the state of Nebraska if those laws also describe conduct that would be a violation of federal law. There would not be enough federal agents to do that, would there?

GINA PALOKANGAS: Again...can you repeat the question for me?

SENATOR CHAMBERS: Um-hum, how many federal agents are there in Nebraska?

GINA PALOKANGAS: I don't know what the total number of federal agents are in Nebraska.

SENATOR CHAMBERS: Were you prepped before you came here to testify today?

GINA PALOKANGAS: No, I was not. I mean, there's a lot of different federal agencies and I don't know how many people they have assigned within the state of Nebraska.

SENATOR CHAMBERS: Did they let you know that there was a person on this committee named Senator Ernie Chambers?

GINA PALOKANGAS: No, I knew that on my own.

SENATOR CHAMBERS: And you didn't anticipate some of the things that I'm asking you so that you'd be prepared to give me the information?

GINA PALOKANGAS: I did not anticipate that question, no.

SENATOR CHAMBERS: Okay. Let me see what...if this bill is not passed, federal investigations in Nebraska are not going to come to a halt, are they?

GINA PALOKANGAS: No, but they will suffer.

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SENATOR CHAMBERS: But you don't know that because you don't know how many cases have been harmed because they don't have license plates. You just have a hunch, right?

GINA PALOKANGAS: I have a good hunch, yes. I have been part of conversations regarding investigations where the inability to get an undercover license plate does hamper the investigation.

SENATOR CHAMBERS: Was that an official...

GINA PALOKANGAS: And that's...

SENATOR CHAMBERS: ...an official discussion with you where agents were explaining why they could not carry through with the investigation and they needed to develop a different strategy and they were seeking your assistance to help them develop that strategy?

GINA PALOKANGAS: Yes, we periodically have meetings regarding cases and these types of discussions do happen as to what investigative step we're going to take next in a case.

SENATOR CHAMBERS: Are you aware that this bill has been brought before the Legislature several times?

GINA PALOKANGAS: Yes, probably since the original statute was passed.

SENATOR CHAMBERS: And the fact that it was...or it should have been evident that it's not likely to pass, the big federal government that has access to all kinds of geniuses at all levels dealing with everything imaginable and that ordinary people such as myself in Nebraska can't even imagine, could not come up with a way to adapt their activities to the fact that they can't get undercover license plates and drivers' licenses in Nebraska? They didn't come up with a plan?

GINA PALOKANGAS: I think you give us more credit than we probably deserve but, no. Federal agencies have a need for undercover license plates issued by the state of Nebraska.

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SENATOR CHAMBERS: And if they don't get it, what's going to happen? Will the federal government get out of the state?

GINA PALOKANGAS: Absolutely not but we will not be effective in conducting our criminal investigations.

SENATOR CHAMBERS: Now I'm starting to wrap it up now because I got enough from you in the record for my purposes. In your role as a lawyer, what do you do because I don't want to ask you questions beyond the area or outside the area of work that you do.

GINA PALOKANGAS: I provide legal advice to the employees that work for our agency that are in our division. And I handle with the assistance of the United States Attorneys' Office civil claims against the government that affect our employees.

SENATOR CHAMBERS: Oh, civil claims so you know what negotiation is. Do you ever negotiate pleas?

GINA PALOKANGAS: I don't work on the prosecution side of the house. I only work with civil claims. If someone were to sue one of our agents or our agency then I will...

SENATOR CHAMBERS: Do you negotiate settlements then?

GINA PALOKANGAS: Sometimes I do, yes.

SENATOR CHAMBERS: So you know what negotiation...

GINA PALOKANGAS: Yes, I do.

SENATOR CHAMBERS: ...means in a legal context. Were you authorized to come here and cut a deal with me if I were willing to work with you in exchange for the federal government ceasing to disrespect our laws and our constitution in exchange for the federal government to cease corrupting our incompetent and somewhat dishonest and dishonorable law enforcement people? I'd give them their license plates and their drivers' licenses. Did they authorize you to cut a deal like that with me?

GINA PALOKANGAS: I'm not in a position to negotiate legislation. I'm only in a position to tell you what as a

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federal agency I think would help us as far as Nebraska state laws.

SENATOR CHAMBERS: Are you here today lobbying for this bill?

GINA PALOKANGAS: I'm not lobbying. I've been asked to provide information as to why the government would like to have undercover license plates and drivers' licenses.

SENATOR CHAMBERS: Are you paid for the work you do?

GINA PALOKANGAS: I am paid for the work I do.

SENATOR CHAMBERS: You work for a federal agency.

GINA PALOKANGAS: I'm a salaried employee.

SENATOR CHAMBERS: Are you authorized by your agency to speak on behalf of this bill?

GINA PALOKANGAS: I've been authorized by my boss, yes, to come down here and speak to you today.

SENATOR CHAMBERS: When a person speaks and is paid, I presume that what you're doing now is a part of your job because your boss wouldn't tell you to do something outside of what you're supposed to do, would he?

GINA PALOKANGAS: Correct. I'm here as an informational role. I've been asked to provide information to this committee as to the effect of this proposed legislation.

SENATOR CHAMBERS: I may have blundered. I said your boss and then used the pronoun, he...

GINA PALOKANGAS: It is a he.

SENATOR CHAMBERS: ...but it is a he, isn't he?

GINA PALOKANGAS: It is a he.

SENATOR CHAMBERS: Because I know how the federal government operates but I'd like to work on that like I try at the state level but (laughter) my power doesn't reach that far.

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But here's what you could carry back to your boss. Lawyers have heard judges say that we're dealing with a situation where we have to weigh the equities or perform a weighing or comparing comparison to get at what we ought to do in making a decision. If there's a possibility that the rights of the citizen are going to be infringed, in order that a greater good, mainly security and safety must be effectuated, somebody must look at that situation and determine if the benefits of security outweigh the negative of infringing the citizen's right. So the concept of weighing is not unfamiliar to you.

GINA PALOKANGAS: I understand perfectly what you're saying.

SENATOR CHAMBERS: Now, your boss is in a position to weigh what I'm offering. He is in a position to weigh which means the most to him. To remain in a position to disrespect this state's constitution and laws or to get his undercover license plates. If getting those plates and the undercover drivers' licenses are as important as we're being led to believe to the FBI, and it's important to them because they're trying to carry out the laws and catch bad people. Then it seems to me they're emphasizing upholding and respecting the law so it should be a slam-dunk for them to say, we will stop disregarding their constitution and laws in a New York minute. So if your boss will send word to me and it doesn't have to be through you that he will get the government for which he works to stop circumventing our constitution and laws, to stop persuading our less than honorable law enforcement people to go along with it, then I will help restore some integrity to the federal government by getting them out of that business and help try to set a higher standard for our law enforcement people so they will not corrupt and undermine the law and generate disrespect for them. That's the deal that I offer. I don't have any more questions I'm going to put to you. And I want you to know that nothing I said or asked was designed to disparage you as an individual or a person in any way. But you came here to testify for a bill and I have a job as an elected official and a policymaker to elicit as much information as I can that will help inform our judgment as lawmakers and give us a notion of how we ought to vote on these bills. So I appreciate your coming. I regret that your boss was not here. I regret that nobody from the U.S. Attorneys' Office was here. I regret that no agent who works in the field was

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here. And I'm regretful that these federal agents hide behind a woman and fail to send people who have direct knowledge of what this bill talks about. It was unfair for them to send you here, unfair to you, unfair to me, unfair to this committee, unfair to Senator Baker. But other people don't have my standards so maybe I'm the only one who feels that it was unfair that they behaved in the way they did. But I want it clear because I've been investigated by the FBI. I was investigated for years and years and years, and you can get my file. You probably don't even have to go through a Freedom of Information request. And here's one thing you'll find. I am the only person in this country who was certified by the FBI as having perfect credit (laughter). That's what I found among the papers. This man pays his bills. His credit is impeccable. I usually don't boast about that but I just thought I'd throw that in. And now that might encourage you to go and check my file to see if I'm telling the truth.

GINA PALOKANGAS: I have no reason to do that.

SENATOR CHAMBERS: Mr. Chair...oh, Mr. Co-Chair, I don't have any further questions.

SENATOR Dw. PEDERSEN: Any other questions from the committee? Seeing none, thank you, ma'am.

GINA PALOKANGAS: Thank you.

LARRY THOREN: (Exhibit 4) I'm Larry Thoren, T-h-o-r-e-n. Chairman Bourne, members of the Judiciary Committee, I'm Larry Thoren, chief of police city of Hastings, representing Police Chiefs Association of Nebraska. And, as in the past, we would like to go on record supporting this bill and the issuance of undercover plates for the federal agencies. We feel it's necessary for investigation of organized crime. Many agencies are a part of FBI joint terrorism task force and also some of the drug task force. What questions can I answer for you?

SENATOR Dw. PEDERSEN: Thank you, Mr. Thoren. Is there any questions from the committee?

SENATOR CHAMBERS: That's Chief Thoren. Isn't that Chief Thoren?

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LARRY THOREN: Yes, sir.

SENATOR CHAMBERS: Chief Thoren, have I on occasion...and you've heard this so many times from me, been a thorn in your side?

LARRY THOREN: Well, you've mentioned to me that I'm a thorn on your side or a thorn in your side so whichever position, I'd be glad to answer your question.

SENATOR CHAMBERS: And today because I had others testify more directly to the issues I have in mind, I don't have anything to ask of you. But I don't want you to feel that I'm slighting you because, you know, if I had anything (laughter) to ask of you, I would do that.

LARRY THOREN: Okay. I will not go home and cry myself to sleep.

SENATOR CHAMBERS: Okay (laugh).

LARRY THOREN: But I'll be back up so I...

SENATOR CHAMBERS: Thank you.

SENATOR Dw. PEDERSEN: Anybody else on the committee have any questions of Chief Thoren? Thank you, Chief.

LARRY THOREN: Thank you.

SENATOR Dw. PEDERSEN: Do we have any other testifiers in favor of this bill? Anybody opposed to the bill? Any neutral? Seeing none, that will close the hearing on LB 81.

SENATOR CHAMBERS: Maybe he wanted to close...

SENATOR Dw. PEDERSEN: Excuse me? Do you want to close? (inaudible) Excuse me. Thank you, (inaudible).

SENATOR CHAMBERS: It's okay.

SENATOR BAKER: Thank you, Senator Pedersen. I really don't have anything to add. I think...

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SENATOR CHAMBERS: Then why are you closing? (Laughter)

SENATOR BAKER: I thought Senator Combs had a question for me.

SENATOR CHAMBERS: Oh, okay (laugh).

SENATOR BAKER: No? I want to give her that chance (laughter), but I don't see any questions. But I think Senator Chambers has eloquently staked out his logic, you know, what...his rationale here and I certainly will work with the committee and if there's something we can do to move this bill along, we'll certainly pledge to do that so with that, if there are no more questions. Oh, that's a good reason not to close, isn't it?

SENATOR Dw. PEDERSEN: Senator Chambers.

SENATOR CHAMBERS: You should have left well enough alone (laughter). Senator Baker, as I read this bill, there is not a lot of new language that you put into it.

SENATOR BAKER: Very little.

SENATOR CHAMBERS: You put federal, the word "federal" on page two. Then, there's one other place, I believe, that you mentioned.

SENATOR BAKER: Line 24, page four, federal for the driver's license. Actually, two sections to the bill.

SENATOR CHAMBERS: And you only add two words.

SENATOR BAKER: That's right.

SENATOR CHAMBERS: But there are a lot of other words in this existing law, isn't that true?

SENATOR BAKER: Yes. As I said in my opening, that spells out the process that they have to go through to have an undercover plate or an undercover driver's license issued. We didn't really talk about that, I guess, but...

SENATOR CHAMBERS: Now when we're in the first sentence of the existing law, it says on page two, line three,

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"Undercover license plates may be issued to" and this is the existing law, "state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes." If the FBI is working with one of these agencies, why can't they drive, ride around in one of their cars which has undercover plates?

SENATOR BAKER: It's not always that simple, I'm afraid and I'm not a federal agent. But they might be following someone across state lines or something for that matter, from one state to another with an undercover plate. And it works to a point until they get into a small rural county that out-of-state plate just sticks out like a sore thumb.

SENATOR CHAMBERS: Do we have 33 votes for this bill?

SENATOR BAKER: I haven't checked. I don't know.

SENATOR CHAMBERS: Now, you're aware that I may not like the idea of the state having undercover plates so I could make an amendment, offer an amendment to strike "state", couldn't I?

SENATOR BAKER: You certainly could.

SENATOR CHAMBERS: Then strike "county".

SENATOR BAKER: You could.

SENATOR CHAMBERS: Then a separate amendment that would strike both "state" and "county".

SENATOR BAKER: You can offer whatever amendments you obviously feel comfortable with, yes.

SENATOR CHAMBERS: Probably since I've been able to take a one-sentence bill and get 20 or 30 amendments, I could probably get a hundred or more out of this green sheet, couldn't I?

SENATOR BAKER: I imagine you could.

SENATOR CHAMBERS: Line up your 33 votes, Senator Baker, because I'm loaded for bear and I'm going to stop that wicked federal government from getting any favors from this

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state as long as they're going to circumvent the constitution that I swore to uphold, the statutes that I swore to uphold and I did that just a few days ago. And I took that oath seriously. And the burden is placed on me, not because I hold my hand up and say, "I affirm" but because of my sense of honor. If I am going to uphold this constitution and laws, that's against everybody who would disrespect the constitution and laws and especially the federal government. And especially people whose oath is to uphold the law and when they become violators or disrespecters of the law, they bring the whole law into contempt. I want to stop that. And this bill is going to give me the opportunity so if my colleagues send it to the floor and if you prioritize it or anybody else is foolish enough to do it, I suggest that all of the federal people in this state watch the debate because I will be discussing them at length to show why I have contempt for the way they conduct their affairs. Contempt for the way they won't protect the rights of people of my complexion. Contempt for the way they are aware of violations of the law by the Omaha Police and will not even look into it. They'll have a chance to hear all that and you're going to give me the opportunity so, Senator Baker, for that you have my thanks.

SENATOR BAKER: You're welcome. Thank you.

SENATOR Dw. PEDERSEN: Any other questions from the committee? Thank you, Senator Baker.

SENATOR BAKER: Thank you.

SENATOR Dw. PEDERSEN: Now that will close the hearing on LB 81 and we'll open the hearing on LB 115. Senator Friend, whenever you're ready. It's safe, go ahead (laugh).

LB 115

SENATOR FRIEND: Chairman Bourne is back so thank you, Chairman Bourne, Vice Chair Pedersen and the rest of the Judiciary Committee. My name is Mike Friend. For the record, it's F-r-i-e-n-d and I represent the 10th Legislative District in northwest Omaha. And I'm here to introduce LB 115. I'm introducing this legislation at the request of the Nebraska Crime Commission. As I, by the way,

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previously did for them during the 2004 session. And the bill was...I believe it was numbered 928. And based on committee feedback at last year's hearing, the legislation presented today has addressed the concern of an applicant's right to appeal. LB 115 permits the automatic decertification of a law enforcement officer upon the final conviction of a felony offense and without the necessity of conducting a hearing under the Administrative Procedures Act. And for background, the Nebraska Revised Statutes Section 81-1403(6) gives the Police Standards Advisory Council the authority to revoke or suspend the certificates or diplomas that they issue. And, additionally, Nebraska Revised Statutes Section 81-1410(2) essentially restricts convicted felons from admission to the Law Enforcement Training Academy so we're trying to come up with some consistency here. And currently, based upon rule and regulation, the Police Standards Advisory Council and the crime commission holds hearings to decertify officers who have been convicted of felony crimes. And this requires considerable preparation, presentation to conform to both rule and regulations as well as the Administrative Procedures Act. And this, in spite of the fact that a convicted felon can't be admitted to the training center without a pardon and that essentially most law enforcement agencies wouldn't intentionally hire a convicted felon. So, simply put, we think that LB 115 saves time and resources and I just wanted to thank you for the opportunity and urge the passage of LB 115 to the floor. Thank you. Any...

SENATOR DW. PEDERSEN: Thank you, Senator Friend. Is there any...I'll turn the committee back to Senator Bourne (laughter). I did not see him come into the room.

SENATOR BOURNE: (laugh) Thank you. Are there questions for Senator Friend? Seeing none, thank you. First testifier in support? Could I get a show of hands of...please sit down. Could I get a show of hands of those in attendance that are going to testify in support? I see four. In opposition? I see none. Neutral? I see none. Thank you.

STEVEN LAMKEN: (Exhibit 5) Members of the Judiciary Committee, my name is Steven Lamken. I'm the director of the Nebraska Law Enforcement Training Center. I'm requesting your support for LB 115. Passage of LB 115 will provide for the revocation of a person's law enforcement

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certification upon final conviction of a felony offense without the requirement of an administrative hearing. I would briefly like to present the reasons to support this bill. The law enforcement profession desires to maintain the high standards expected of a person to be certified as a law enforcement officer. A prerequisite in state Statute 81-1410 and Rule and Regulation Title '79, Chapter 8, for admission to a law enforcement academy for certification training, requires that an applicant has never been convicted of a crime punishable by imprisonment in a penitentiary for a term of one year or more, unless pardoned for such crime. The Legislature through statute and the profession through rule and regulation have made it evident that they do not believe nor want convicted felons from becoming law enforcement officers. The same belief holds true for the profession regarding persons with law enforcement certification who are convicted of a felony offense. The profession wants the certification of such offenders removed without delay. A convicted felon cannot possess a handgun. An essential task of a law enforcement officer is to be able to use a handgun in the performance of his or her duties when required. In addition, all law enforcement officers must annually qualify with a handgun as required by state statute. A convicted felon cannot fulfill the essential duties of a law enforcement officer nor can a convicted felon meet the annual requirements for maintaining appointment as an officer. The Police Standards Advisory Council has revoked the law enforcement certifications of 17 convicted felons since beginning to conduct revocation hearings. These hearings are time consuming and require considerable resources in addition to the council's time. No one convicted of a felony offense has contested his or her certification revocation before the council. All such hearings have been uncontested. This would seem to indicate that persons convicted of a felony recognize that their offenses are so egregious as to merit revocation. Passage of this bill would not isolate persons from any appeal of such a revocation. A person, whose certification has been revoked upon final conviction of a felony, who believes to have been wronged could still seek redress through the courts. I request your support for LB 115 and I will attempt to answer any questions you might have. I've included with my testimony letters of support from the Nebraska's Sheriffs' Association, the Police Chiefs Association of Nebraska, the Police Officers Association of

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Nebraska, and the Fraternal Order of Police.

SENATOR BOURNE: Thank you, Mr. Lamken. Those letters will be entered into the record. Are there questions? Senator Chambers.

SENATOR CHAMBERS: Mr. Lamken, I agree with what's being done here so I want to be sure that it's going to be done in a way that will be effective. As I look at...first of all, why is the definition of felony included? Because in Nebraska offenses are designated as felonies and I'll tell you why I say that. In the language above that, it mentions a person being convicted of pleading no contest for a felony period. Then it gives a definition for purposes of this subdivision, a felony means a crime punishable by imprisonment in a penitentiary for a term of one year or more. There are offenses that carry an offense...I meant a sentence of a year but they're Class I misdemeanors, and they're not served in the penitentiary.

STEVEN LAMKEN: Yes, sir.

SENATOR CHAMBERS: On the other hand, there are felonies with no minimum sentences so a person could plead no contest or be found guilty and would not be sentenced to any period of imprisonment. So I would like to talk to you, not today, but whoever is working with the...you know, on the drafting of the legislation to see whether or not the language which is designed to make clear what is being done may not be creating a loophole.

STEVEN LAMKEN: I understand, Senator.

SENATOR CHAMBERS: Okay.

STEVEN LAMKEN: And we've dealt with the same issue on that wording because you're right. Class I misdemeanors can meet that criteria.

SENATOR CHAMBERS: Um-hum. And some felonies don't have any minimum sentence.

STEVEN LAMKEN: Yes, sir, and some other states their misdemeanors can be...have much higher penalties and still be a misdemeanor but it meets our standard, our threshold

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for denial of admission.

SENATOR CHAMBERS: And think of this too. I don't want to forget it. Instead of saying imprisonment in a penitentiary...well, wait a minute, let me back up. Is the purpose to have this apply to anybody convicted of an offense that can carry a one-year sentence whether a misdemeanor or a felony?

STEVEN LAMKEN: No, sir, felonies.

SENATOR CHAMBERS: Okay. Then I don't have to deal with the other because I was going to say, instead of saying imprisonment in a penitentiary, just use the word incarceration because that would mean wherever the person was locked up. But if we're dealing only with felonies then maybe this language, as far as where the person is locked up, would be okay. But the other...I really have serious concerns about.

STEVEN LAMKEN: Yes, sir.

SENATOR CHAMBERS: Okay.

SENATOR BOURNE: Thank you. Further questions? I have a quick one. The bill on page three talks about the revocation of a certificate's holder without a hearing. Is there due process concerns with that?

STEVEN LAMKEN: (laugh) That's a loaded question. I guess for the profession, no, sir. We want their certificate back when they've been convicted of a felony. The only due process, I think we're offering them in this procedure would be is if they feel they've been wronged they can go before. They can go to the courts and, of course, they always have that avenue. But as far as an administrative process within the state, we're saying, no, you do not meet the threshold to maintain a license or a certificate or license anymore.

SENATOR BOURNE: I mean, doesn't the law distinguish getting a license versus having one and having that taken away automatically upon a conviction for something else? I guess what I'm just concerned about...I'm not saying what you're trying to do is wrong. I'm just simply saying, it seems to me that's an area that could be challenged.

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STEVEN LAMKEN: It might very well be, sir. I can't answer that. We feel it's because the person...I'd strongly, first of all, the integrity of the profession but second of all, the person really cannot possess a firearm and that is essential to the job. And this Legislature passed law that said they must be able to use a firearm annually and qualify with it. So they would not be able to fulfill the essential tasks of that professional position.

SENATOR BOURNE: Okay. Thank you. Further questions?
Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. Lamken, can you give us an example of what's happening here and why we have to do this?

STEVEN LAMKEN: Every revocation process requires at this time a full administrative hearing under the current statutes. That requires us to conduct a full-blown investigation, to appoint a prosecutor, to provide counsel to the Police Standards Advisory Council who sits as the hearing body. The council must convene, schedule a meeting, it must be published. They must conduct a full administrative hearing, have a finding of fact, all this. And meanwhile, the respondent or the, I guess you would say the respondent in this must be contacted through all the process, formally contacted through certified mail, whatever. It's a rather lengthy process, due process, that we do in these. And we've never had one yet. Many...some have surrendered them voluntarily but many...nobody's ever said, I want to contest my felony conviction.

SENATOR Dw. PEDERSEN: Have we had any law officers continue to practice their business as a law officer after they've been convicted of a felony?

STEVEN LAMKEN: (laugh) I wish I could say no but I can't tell you I have a perfect history of law enforcement in the state of Nebraska. We have had one who was proud to show his certificate while he was in prison which this is embarrassment.

SENATOR Dw. PEDERSEN: Do you have numbers of how many past felons who have had pardons who have gone through maybe the

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academy?

STEVEN LAMKEN: No, sir, I don't. I know there have been some pardons of people who were pardoned of a felony. Once they receive a pardon, we really can't look at it. It's basically an erased record and we do not then have the ability to review it.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Thank you. Further questions?

SENATOR CHAMBERS: The kind I have...I'll discuss when we work on the bill, the language.

SENATOR BOURNE: Thank you. Thank you for your testimony. Next testifier in support?

JOHN BECKER: John J. Becker, B-e-c-k-e-r. Mr. Chairman, members of the committee, my name is John J. Becker. I'm an assistant chief of police for the Lincoln Police Department, a current member of the Police Standards Advisory Council and for one more month, their chair. As that current chair, I've been asked to testify by the council in favor of and urge your support of LB 115. As you've heard in the state of Nebraska as a convicted felon, you give up numerous rights that other citizens may or may not take for granted. Statute prohibits a felon from seeking certification as a law enforcement officer in the state of Nebraska. It becomes more problematic also, as you've heard, that if you are a certified officer in our state and then are convicted of a felony offense. Currently, the revocation of that certification rests with the Police Standards Advisory Council. In my tenure now in my third four-year term, we've seen that process and for a variety of reasons, not just felony convictions, become an ever-increasing part of our agendas and workload. Just yesterday we were in Grand Island and spent the entire day in a decertification hearing, and that hearing has had to be continued into our February meeting. That process has to be continued and we would urge that you as the committee would help us streamline the revocation process. And we believe that LB 115 moves us in that direction. Current state law prohibits a convicted felon from pinning on a badge or a star in our state. If that convicted felon already has one,

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it makes sense to take the immediate steps that this legislation provides and decertify that person from holding a law enforcement certificate. Any movement in reducing the bureaucracy is viewed by our council as a positive one so we would urge your support of LB 115. I would entertain any questions that the committee might have.

SENATOR BOURNE: Thank you. Questions for Mr. Becker?
Senator Chambers.

SENATOR CHAMBERS: Mr. Becker, a felon cannot own or possess a firearm. Isn't that true?

JOHN BECKER: Correct.

SENATOR CHAMBERS: And a law enforcement officer would have to be able to possess a firearm, wouldn't he or she?

JOHN BECKER: I don't know of any law enforcement agencies that put a certified officer out without a firearm.

SENATOR CHAMBERS: I just...as you talked, I saw even more problems with having to go through a whole lot of red tape to get rid of these people. That's all that I have.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

JOHN BECKER: Thank you.

SENATOR BOURNE: Next testifier in support?

PATRICK CAVANAUGH: Mr. Chairman, committee, I'm Patrick Cavanaugh, attorney for the Nebraska Fraternal Order of Police and I'd like to thank Senator Friend for introducing this bill, LB 115. We represent over 2,500 members of the law enforcement across the state of Nebraska. Mr. Lamken has already provided you with a letter from Lt. Grabowski for the Fraternal Order of Police. And we'd just like to second our support for this bill as it continues to encourage respectability in law enforcement for the state of Nebraska.

SENATOR BOURNE: Thank you. Questions for Mr. Cavanaugh?
Senator Chambers.

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SENATOR CHAMBERS: When you see Uncle James, tell him this is my contribution to the group that he represents for this session.

PATRICK CAVANAUGH: I will pass that along, Senator.

SENATOR CHAMBERS: He'll understand. Okay.

SENATOR BOURNE: (laugh) Thank you. Further testifiers in support?

LARRY THOREN: (Exhibit 6) Larry Thoren, T-h-o-r-e-n. Larry Thoren, Chief of Police, city of Hastings, representing the Police Chiefs Association of Nebraska, in support of LB 115. Police chiefs are responsible for the behavior of police officers and there are certain types of conduct that people should automatically be removed from that position. And we urge support on this bill.

SENATOR BOURNE: Thank you. Questions for Chief Thoren? Seeing none, thank you.

LARRY THOREN: Thank you.

SENATOR BOURNE: Next testifier in support? Testifiers in opposition? Any neutral testifiers? Senator Friend, to close. Senator Friend waives closing. That will conclude the hearing on LB 115. Senator Friend to open on LB 200. As Senator Friend makes his way to the stand, the chair, the people wishing to testify in support of the legislation make their way forward. Again, sign in. Senator Friend, when you're ready.

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SENATOR FRIEND: Thank you, Chairman Bourne. And, again, members of the Judiciary Committee, thank you. For the record, again, my name is Mike Friend, and it's F-r-i-e-n-d and I represent District 10, northwest Omaha. I'm here to introduce LB 200 at the request of the city of Omaha. LB 200 would repeal provisions of the vehicular pursuit law imposing strict liability on political subdivisions and the state when innocent third parties are injured. This third

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party liability statute, as I understand it, which was passed in 1981 amended in 1986 and again in 1996 generally states that when an innocent third party suffers damages, either personal injuries or property damage that is proximately caused by a law enforcement pursuit, the government entity employing the pursuing officer must pay for the damages. The Supreme Court has interpreted this, again, the way I've understood it, to impose strict liability on the employing law enforcement agency. Neither the reasonableness or the wisdom of the pursuit or the care used in the pursuit is a defense. If the injured third party is an innocent third party, there was a pursuit and the damages were caused by the pursuit, the payment must be made. Additionally, the strict liability requirement statute does not allow the municipality to recover losses from a fleeing third party. That's just, to me, a side note. But the way I understand it, is fact. This statute not only has cost our municipalities and our state a considerable amount of money but has also made the public less safe due to law enforcement officers who forego chasing a suspect or criminal to avoid a possible accident. Now, subsequent testifiers will provide specific information on those particular financial losses but more importantly to me, I think, a little bit more information, to a degree, what dangers a statute such as this could impose on the public. Nebraska is the only state in the nation that actually imposes the strict liability. And on enforcement for the injuries for a pursuit, I've been informed that most states use the usual negligence standard to see if a city or other agency must actually pay on that. By the measure, the police have the opportunity to show that it was reasonable to conduct the pursuit, and they did so in a reasonable manner. Police would only pay if they acted unreasonably by the normal negligence standard. A few states either grant the police immunity from liability for pursuit damages or require an injured third party to show the police acted with gross negligence, not necessarily what we're asking for here in this particular legislation. By this standard, Nebraska just happens to be the strictest and that is, Nebraska requires payment by a city, a county, or a state in many, many circumstances when no other state laws would require a payment. Now, really to sum up, I think I pointed out earlier, it's not a financial thing for me. I'm not here because of that. I've talked to some of you about this legislation previously in different situations. To me, it

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seems time to repeal it; at the very least, time to have this debate because I think everything evolves. Law enforcement, strategy, principles evolve whether we force them into situations or not. It so happens in 1981 we feel like we forced them into the situation; possibly at that time, the right thing to do. I'm not saying that it was or wasn't. What I would say is that there are procedures in place now. Law enforcement agencies just like any other type of group or organization, hopefully, are smarter about the way they do their job, more effective, more efficient, and that's why we're here where we're at. And I'd be happy to answer any questions. That concludes my testimony.

SENATOR BOURNE: Thank you, Senator Friend. Are there questions for Senator Friend? Senator Chambers.

SENATOR CHAMBERS: I believe in spreading happiness and since Senator Friend said he would be happy to answer questions I have one or two. But, Senator Friend, before I ask you any question, you're aware that Nebraska has this law and it's the only one in the country because Nebraska has something which no other state has, namely, a senator such as myself who would successfully bring about this legislation. Would you agree with that as a generally correct statement?

SENATOR FRIEND: I would.

SENATOR CHAMBERS: Okay. Now, so that the record is clear, I have tried in the past to get law enforcement agencies to adopt policies that were reasonable and it was not reasonable to me to just having a policy that when the officer in his or her judgment thinks that the danger to others exceeds the desirability of apprehension, then the chase is cut off. That never took place. Their adrenaline flow, they...some cops have even said, I won't let anybody who runs from me get away. The vast majority of these chases involve misdemeanor...well, not misdemeanors...traffic offenses and, in some cases, no offense at all. A person is afraid of the police and runs and the police pursue. They caravan meaning several cruisers will get involved in the chase, and if one fool is running and four cruisers are chasing, you multiply that and you now have five fools out there endangering the public. But, and this is the underlying philosophy, if a society

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determines by allowing cops to chase people that pursuit through areas where people can be harmed is going to be accepted as a legitimate law enforcement activity, if any innocent person is hurt as a result of this policy being implemented, correctly or incorrectly, since society agrees with the existence of that policy, society as a whole should participate in making that individual who is innocent whole. Now here's the question I will ask you. Are you aware that there have been innocent third parties or their family members, in some cases, if a person may have been killed, have recovered under this statute?

SENATOR FRIEND: I'm aware of that to be the case.

SENATOR CHAMBERS: What do you think would have become of these...are you aware that money in most of these recoveries since they would involve injury went for medical bills and sometimes equipment because the person would be rendered a quadra- or paraplegic? What would have become of those people had they not been able to recover?

SENATOR FRIEND: Well, I don't know the answer to that specifically. I think that there are different scenarios or possibilities. One is that there are certainly the normal avenue that you or I would have to take if I were chasing you through the street, Senator Chambers, and you ran into an innocent third party, there would be no strict liability to deal with my negligence or my attitude toward you. What would have to happen is we would go through the normal channels in order to get that third party the proper help in order to make...

SENATOR CHAMBERS: Well, where would that help come from?

SENATOR FRIEND: Well, where would it come from now?

SENATOR CHAMBERS: We ask the questions. You answer (laughter).

SENATOR FRIEND: But I'm kind of like you so I...my answer is with a question.

SENATOR CHAMBERS: But when I'm testifying I answer the questions and I don't ask...

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SENATOR FRIEND: I know but I...

SENATOR CHAMBERS: ...and I say that so that the public knows that even if it's a senator...

SENATOR FRIEND: My answer would be...now let me rephrase instead of asking the question. My answer would be I would assume that I would have to go through or the other person, an innocent third party would have to go through normal channels with their attorney and everything else in order to try to find negligence on the part of the party that had injured them.

SENATOR CHAMBERS: Well, let's say they found...they did all that and that's not going to be as easily done as said. But let's say they do all of that and they get a judgment against the person who caused the injury but the person is judgment proof. In other words, has no source of funds. The person injured has an empty judgment. How does that person deal with that situation?

SENATOR FRIEND: Senator, that's a quagmire that I don't have an answer for and that's an unfortunate situation that could end up being a result of something like this. But,...

SENATOR CHAMBERS: Now...

SENATOR FRIEND: ...at the same time and part of my answer is this, Senator. At the same time we don't know with that hypothetical that you gave me that it was necessarily in that particular situation or something that you're talking about that was a law enforcement agency's fault. I mean...

SENATOR CHAMBERS: Well, here's what I want to get to to show a distinction between the example you gave and what this law deals with. Two people out on the street are not in the employ of the government carrying out a governmental policy. So when the government's policy is being carried out there should be strict liability. If you're riding on a bus and you get injured on the bus, are common carriers held strictly liable?

SENATOR FRIEND: I don't know the answer to that but I don't believe so.

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SENATOR CHAMBERS: Oh, well, okay, we'll depart from that.
Are you...

SENATOR FRIEND: Was I right?

SENATOR CHAMBERS: Let's not even worry about that. Are you aware that a police officer's family recovered under this bill because the officer or member was...

SENATOR FRIEND: I was not aware of that. I was not aware of that.

SENATOR CHAMBERS: ...an innocent third party. And that family would not have recovered without this bill so even police and their family who are against it take advantage of it when it helps them. Here's what I wanted to ask you, though. Do you agree that high speed pursuit or pursuits which may not be high speed are allowable in this state?

SENATOR FRIEND: Yes.

SENATOR CHAMBERS: And society is aware that these pursuits take place. Do you agree?

SENATOR FRIEND: To...in a general sense, yes.

SENATOR CHAMBERS: Right. Now I'm just speaking generally. Have you or anybody from the city of Omaha undertaken a study to see if the public believes that when an innocent party is injured as a result of one of these chases that innocent party should not be able to recover by way of strict liability from the political subdivision for which the pursuing officer works?

SENATOR FRIEND: I have not done any study of that nature and I don't know if the city of Omaha has but I know that they've done research, yeah.

SENATOR CHAMBERS: Now, if you are a person who is injured and you are going to file a suit against the one who may have caused it and there are two sources, two entities for you to sue...a penniless individual or Wal-Mart for whom that penniless individual works. Which one are you going to sue?

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SENATOR FRIEND: Why would I be suing them?

SENATOR CHAMBERS: Because you were injured.

SENATOR FRIEND: How...but whose fault was it that I was injured? My own or Wal-Mart's or the third person's?

SENATOR CHAMBERS: Well, it wasn't your fault. It wasn't your fault. That's why I say, you can go after this penniless person or you can go after Wal-Mart.

SENATOR FRIEND: But I think we can't discount fault here, Senator.

SENATOR CHAMBERS: Okay, I won't go to that. It's too complicated for you. I don't want to ask you those difficult involved questions that are hard to understand.

SENATOR FRIEND: Well, and I don't think there's any reason to insult me either.

SENATOR CHAMBERS: Well, I don't mean to insult you. I thought...

SENATOR FRIEND: Well, you just did.

SENATOR CHAMBERS: Well, I didn't intend to. I thought you didn't understand the question and I thought it was simple.

SENATOR FRIEND: No, I understood the question and I tried to answer it. I'm not sure where you're going with it. And I want to...

SENATOR CHAMBERS: You don't need to know where I'm going.

SENATOR FRIEND: ...and I want to give you a direct answer.

SENATOR CHAMBERS: I said I'll simplify the question.

SENATOR FRIEND: Please do.

SENATOR CHAMBERS: Senator Friend, there's a woman who is paralyzed as a result of one of these chases. She has supported legislation like this. She has testified to try to raise the cap that the Legislature imposed on what a

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person can recover. Is it your feeling that that person is unreasonable for going to the place where there is money to be recovered?

SENATOR FRIEND: Senator, that's not my feeling. My answer to that is, I think the fault plays into the consideration of this whole scenario and...

SENATOR CHAMBERS: Let me ask you another question. Are you aware and this is not intended to insult you, that under this law the individual officer is not liable? Are you aware of that?

SENATOR FRIEND: No, I wasn't.

SENATOR CHAMBERS: Well, the officer is not. The only one who is liable under this legislation is the political subdivision so what any interest does any cop have coming here, saying that he's against this bill?

SENATOR FRIEND: I do not know. You would have to ask them that specific question.

SENATOR CHAMBERS: Now if a cop is found to be negligent, the cop could be sued along with the city. Isn't that true?

SENATOR FRIEND: I don't know...

SENATOR CHAMBERS: Well, I'll wait for some of these people...

SENATOR FRIEND: ...the answer to that question.

SENATOR CHAMBERS: ...who will testify after you. But my intent...it may have been to dig you but not to insult you.

SENATOR FRIEND: Thank you. I apologize that I got to the...

SENATOR CHAMBERS: Don't...now you insult me (laugh).

SENATOR BOURNE: (laugh) Okay, let's move on. Further questions for Senator Friend? Seeing none, thank you, Senator Friend.

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SENATOR FRIEND: Thank you.

SENATOR BOURNE: First testifier in support of LB 200?

TOM MUMGAARD: Good afternoon, Mr. Chairman and members of the committee. My name is Tom Mumgaard. I'm a deputy city attorney for the city of Omaha. That's spelled M-u-m-g-a-a-r-d. I'm here today to state the city of Omaha's support for LB 200. As was noted, the law was first passed in 1981 but it really only began to have a significant financial impact on the city starting in the early 1990s as it's availability became more widely known. The statute is contrary to prior existing common law and that that held cities such as the city of Omaha liable for pursuit damages only under traditional negligence law. In the last 12 years the city of Omaha has paid almost \$8 million as a result of this statute. We currently have pursuit judgments against the city of Omaha of over \$1.5 million waiting on appeal and about another \$1 million in pursuit claims awaiting trial so this is certainly a growth industry. If we lose all of the currently pending cases, the city of Omaha's total will be well over \$10.5 million in 12 years. Now, as was noted, Nebraska is the only state in the nation that imposes strict liability on law enforcement officers or law enforcement agencies for injuries in a pursuit. The statute does, as a result of some amendments that came since 1981, it does allow the city to recover its losses from the fleeing person but, obviously, that's rarely helpful. Further, since the courts have extended the reach of the statute to include passengers in the fleeing vehicle, we have increasingly been paying not just people who get hit by the fleeing car but we're paying the fleeing person's girlfriend or other acquaintances who have accepted a ride. There are no other instances where the law makes the city or any city face strict liability. Traditionally, those instances have been reserved to situations where an inherently dangerous activity is occurring, for example, the use of nuclear power. And very few other instances where state law imposes strict liability. The pursuit statute implies a belief that police pursuits are an inherently dangerous activity. Now, certainly, you can look to the professional literature to see whether that's true or not but I can tell you that no other state has adopted that view. Repeal of 13-911 would simply remove this financial burden from cities such as the

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city of Omaha and allow traditional negligence law to compensate people when police have acted unreasonably in a pursuit. We're not saying that we want police to have carte blanche to pursue. We want police to act reasonably in a pursuit and we think traditional negligence law can force through its imposition of damages, can force that to happen. If it is the state policy to care for people who are hurt in pursuits when there is no negligence, then we would urge you to seek better ways to do it that would more equitably spread the cost across society. Thank you. I have no further comments. I'll answer any of your questions.

SENATOR BOURNE: Thank you. Questions for Mr. Mumgaard?
Senator Chambers.

SENATOR CHAMBERS: Mr. Mumgaard, in working for the city as a lawyer, you're the one who handles these cases generally. Is that true?

TOM MUMGAARD: That's true. I've handled more of these cases than I think any lawyer in the state.

SENATOR CHAMBERS: And you would like to have the Legislature step in and make it unnecessary for you to handle these cases in the posture that they are presented now under strict liability.

TOM MUMGAARD: Oh, it doesn't matter to me either way. The city of...

SENATOR CHAMBERS: Then why are you down here...

TOM MUMGAARD: ...the city of Omaha would like to spend its money in different ways.

SENATOR CHAMBERS: So when you...

TOM MUMGAARD: And right now committing, you know, \$700,000 plus per year to this kind of...to these damages is a burden on the city of Omaha.

SENATOR CHAMBERS: When you say that they want, meaning the city, to shift that financial burden from the city. To whom would it be shifted?

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TOM MUMGAARD: Well, certainly, several different ideas have been passed out. I mean, you might work with ways of having a statewide pool. You might make it work somewhat like Workers Compensation Law. We certainly recognize that there are people who have been injured through no fault of their own, through pursuits that have recovered amounts that have made their lives much better. And we recognize that this law has improved the lives of some people who have recovered under the law. In some of those instances, they may have recovered under traditional negligence law and so this law was really unneeded.

SENATOR CHAMBERS: Now, Mr. Mumgaard, because I don't want to go too far so I have to ask you a lot of questions. Have you done any research on police chases in Omaha?

TOM MUMGAARD: Well, I have information based on experience...

SENATOR CHAMBERS: Are you aware of...

TOM MUMGAARD: yes, I've done some.

SENATOR CHAMBERS: ...are you aware of any innocent third party having recovered as a result of a police chase in Omaha before this bill was passed?

TOM MUMGAARD: This bill was passed in 1981. No, I...

SENATOR CHAMBERS: They were chasing before then because that's what led me to bring it.

TOM MUMGAARD: Senator, no, I'm not aware of any recovery before this bill was passed. I am aware of cases since this bill was passed where the city of Omaha has been held negligent in pursuit cases.

SENATOR CHAMBERS: And that was my intent. I had said if the law enforcement agencies are not going to rein in these cops, then the city is going to pay in money. It's working the way I intended. The Supreme Court interpreted it the way I intended. Strict liability. Let me tell you since you're a relatively young person what led me to bring this bill. I had appeared before the city council before I even got in the Legislature trying to get something done about

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chases. Nothing. I went before the Douglas County Board. Nothing. I started compiling because the chases were regular and the paper reported on them. My own statistics using newspaper articles so they wouldn't think I was making it up of the number of people who were injured, people killed, people whose yards were damaged by police cruisers or a person being chased, damage to public property, and came back again with facts and still nothing was done. So when I got in the Legislature I decided to use this method. And the case that was crucial and it's the one that caused former senator Gene Tyson to get on board with this bill because he knew the family. There was a teacher whose car was struck by a fleeing driver. The teacher was killed and left...I don't remember what it was four or six children and a wife. And they went to court and recovered nothing, nothing. And let me give you some background on the chase. There was a place in south Omaha where people could drive in and get food. Some cops were in there getting ready to buy some food. They're in their cruiser. And they saw a guy whose driver's license they had seen revoked in court.

TOM MUMGAARD: I'm very familiar with the case, yes, Senator.

SENATOR CHAMBERS: Okay. So when he came out, they watched him get in his vehicle and they didn't come to him to prevent a violation of the law to really protect and serve. They waited till he got in his vehicle. After he started it and left the private property and got on the street, they waited until he started moving. Then they jumped behind him and chased him, and he ran. They went through yards in south Omaha. And I traversed the route and when I was doing it, people came out and told me, come let me show you what happened. There was a backyard with a relatively steep incline that went up to an alley. You could see where the undercarriage of both cars had stripped away the ground so when the fool went that way, the foolish cops went through that yard and followed. Now, that chase didn't have to occur but it did. And even with those facts being known, the family did not recover. Now, this is a question you may not want to answer. This bill is in place. If your wife were crossing the street and there was a police chase, and she was struck by the pursuing car and killed, you would not seek...well, let's not say she was killed. She was rendered paraplegic. You would not seek a recovery under this law,

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is that true? Or you would seek a recovery?

TOM MUMGAARD: I will answer your question but let me go back and start again...

SENATOR CHAMBERS: Yes, you're free to answer it the way you want to.

TOM MUMGAARD: First off, the case you refer to is now over 30 years old. My experience in trying dozens of police pursuit cases tells me that, at least in Douglas County, Nebraska, that case would be decided differently today. It was atrocious facts and in light of what we know today and judgments that are being made today, I would agree you could point to that case as an egregious result. I am convinced it would not be the same result today. There has been a great deal of evolution in the use of pursuit, the focus on pursuit, the study of pursuit over the last 30 years. Certainly, there's a representative of the Omaha Police Department here that can tell you much more about how that evolution has affected the Omaha Police Department's view of pursuits. I'll leave that to them. As to whether good has come from this law, I will admit, you know, I will commend you. Good has come from this law. I have personally negotiated settlements with claimants who have made claims under this law in which I am very glad to hand the check over to them, that people's lives have been improved by the fact that this law existed. As I said, now I think that some of those negotiated settlements would have resulted in similar payments if this law didn't exist and if common law negligence principles were applied. But, nonetheless, yes, there is some good that comes from the law. We would suggest that the good that comes from the law can be achieved in other ways, that are less burdensome on one or two or three law enforcement agencies. And that certainly this law, when you impose strict liability sends out a suggestion to the public that there is something wrong with police pursuits. But yet I think the public does not really believe that, that police pursuits are a necessary part of law enforcement. And, yes, sometimes people get hurt when the police pursuits are used and, yes, the state should look to see how to take care of those people. We just say, this has been proven over the last 23 years to not be the best way. If it was, perhaps other states would have joined the bandwagon.

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SENATOR CHAMBERS: Now, Mr. Mumgaard, if a member of your family were the innocent victim in a chase, you came here to testify...

TOM MUMGAARD: Excuse me. I'll answer...

SENATOR CHAMBERS: ...and you're opposed to this. Okay.

TOM MUMGAARD: ...certainly. I would be no different than many of the plaintiffs and the families of plaintiffs that I have dealt with over the years. And, yes, I would look for compensation.

SENATOR CHAMBERS: And would you be glad that there was a law such as this where you don't have to go through all the hoops of trying to prove negligence?

TOM MUMGAARD: Well, certainly. From that standpoint, anybody who's seeking recovery is glad if it's simple. You've talked about the balance. That's only one side of the balance. If the balance is supposed to be achieved then you also need to put the other side of the balance on there as to what it means to city finances, what it means to law enforcement. When you put that balance in there, I'm just suggesting, there are better ways to achieve that balance in a more equitable way including equitable to the taxpayers of the city of Omaha.

SENATOR CHAMBERS: I'm going to wrap this up now because you're here as an advocate for the city and I understand your position and what you have to say as an advocate representing zealously your client. What was the amount you said had been paid out by Omaha over the last 12 years if the pending judgments are paid and if the pending cases go against the city?

TOM MUMGAARD: Well, we're currently sitting at almost \$8 million, just short of \$8 million having been paid. We have judgments...well, judgments in two cases now that are waiting on appeal of about \$1.5 million. And currently pending, there's claims of a little less than a million dollars. Of course, the value of those claims are really uncertain. And so, when you add all that up, it's about \$10.5 million.

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SENATOR CHAMBERS: Ten and a half million dollars in 12 years. That's less than a million dollars a year. What is the budget for the city of Omaha?

TOM MUMGAARD: Oh, you got me there. I don't know.

SENATOR CHAMBERS: Is it over a hundred million dollars...oh, if you don't know, I won't...there's no need in me even asking you. Okay.

TOM MUMGAARD: I know what they pay me and that's about all I pay attention to (laugh).

SENATOR CHAMBERS: And they don't pay you a million, I'm sure (laugh).

TOM MUMGAARD: They don't pay me enough. How's that?

SENATOR CHAMBERS: Okay. Have you ever heard anybody from the city council, the Mayor's office, or the head of any agency saying, we could balance our budget and not have to raise property taxes but for that cursed law that Chambers got that makes us have to pay less than a million dollars a year for the injuries to innocent third parties? Have you ever heard that presented?

TOM MUMGAARD: No, but I certainly am aware of employees who have lost their jobs for far less than the lack of \$700,000 a year.

SENATOR CHAMBERS: But it's not because of this bill, is it?

TOM MUMGAARD: Well, it's for lack of money in the city of Omaha budget and part of this...this bill certainly...

SENATOR CHAMBERS: Mr. Mumgaard,...

TOM MUMGAARD: ...causes the city of Omaha's budget to be bigger than...to be spent in different ways than it would have otherwise.

SENATOR CHAMBERS: ...please don't play the lawyer with me. We're both men of the world. We're both practical politicians. I...

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TOM MUMGAARD: Well, nobody has lost their job because of this bill.

SENATOR CHAMBERS: Okay.

TOM MUMGAARD: Money has been spent differently because of this bill.

SENATOR CHAMBERS: If they were to fire you and hire two lawyers with the salary they now give you, that would be a wiser use of their money, wouldn't it?

TOM MUMGAARD: Well, they may get more for their money. It's hard to tell (laugh)...

SENATOR CHAMBERS: I'm just trying to make a point to show that any money expended currently could be expended a different way if they chose to do it. But I don't think they would say that because they pay you the salary they do, that that is what keeps their budget from being in balance or any of the other things that they complain about.

TOM MUMGAARD: I'm not suggesting that this keeps the city of Omaha's budget from being in balance. I'm just saying that the fact is that a significant amount of money is being spent as a result of this bill, this statute...

SENATOR CHAMBERS: My final question.

TOM MUMGAARD: ...and that money would likely be spent otherwise if this statute wasn't in place.

SENATOR CHAMBERS: My final question, counselor. From the standpoint of society as a whole and forgetting the narrow interests of the politicians who run the city of Omaha and think more of a buck than they do the innocent, on principles of social justice, you think there is more that would say this bill should be repealed than there is that says we should keep the law as it is?

TOM MUMGAARD: No, I think that on principles of social justice, the cost...certainly society benefits when pursuits occur. The cost of the damages caused by those pursuits should be spread more broadly across society. Right now

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they are not and I think you can come up with a better way to do it. The first step is to do away with this law.

SENATOR CHAMBERS: That's all that I have. Thank you, Mr. Mumgaard.

SENATOR BOURNE: Thank you. Excuse me...hold on a second, Mr. Mumgaard. Let's see if there's further questions. Are there further questions? Seeing none, thank you.

TOM MUMGAARD: Thank you.

SENATOR BOURNE: Next testifier in support? Welcome to the committee.

GARY GERNANDT: Good afternoon, Senators. My name is Gary Gernandt, G-e-r-n-a-n-d-t. I'm on the Omaha City Council representing District 4 which is in southeast Omaha. I come before you today to share with you what I believe is a cloud, the cloud being the 1984 statute that has developed over law enforcement. I understand that the bill does not make an officer liable; it makes the city liable. I fully understand that. But I truly believe I'm also a retired Omaha police officer and in my 31 years of service to the city I never once or never even knew one that would get up and put on their uniform with the intent of going out and intentionally hurting someone. And I believe that since 1984, that cloud causes officers who are employees of the city to possibly second guess themselves. And when you do that, mistakes are made and Senator Chambers has given some classic examples of those today and in past years when we have come before you. So I would urge you to move LB 200 forward for full debate on the floor. Thank you.

SENATOR BOURNE: Thank you, Councilman Gernandt. Let me ask a quick question. I kind of look at this a different way. I look at this as we have made a policy decision that chases are so important to society that they are valued, that we are willing as a society to pay whatever costs are associated with the outcome. What would you say to that argument?

GARY GERNANDT: Again, if I may just quickly go back to the cloud example. I would not have a problem per se with what you're saying but it causes those that have the

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responsibility and the duty to start to second guess themselves. And when you have over 650 of them out there trying to do the best possible job that they can for you and the citizens of the city of Omaha at least, it worries me as a leader at whence...if I call or if you call or if Senator Chambers calls, that they've got something on their mind because one of their tools has been taken and maybe a handle has been removed or a ratchet has been turned in a different direction and it upsets the toolbox. And I firmly believe that there are other ways under the current negligence statutes that if an officer is negligent, then that would be the approach to go through for remuneration.

SENATOR BOURNE: Thank you. Further questions for the councilman? Senator Chambers.

SENATOR CHAMBERS: Councilman Gernandt, where in the bill, in the laws that exist now, do you see where it says police chases cannot occur?

GARY GERNANDT: That's not in there, sir. I do not see that.

SENATOR CHAMBERS: Where do you see in the law any limitation on how fast the police may pursue?

GARY GERNANDT: It's not in there, sir.

SENATOR CHAMBERS: Where do you see in the law anything that says a police officer may not drive in such a way as to kill a person?

GARY GERNANDT: It's not in there, sir.

SENATOR CHAMBERS: How does this bill...how does the law as it exists now impact on an officer's decision to chase? His job is to do his job or her job. How does the existence of this law make him or her second guess if it's believed that a chase is necessary in the interests of the public?

GARY GERNANDT: I believe you just answered that question, sir. It's just, Senator, just the mere fact that that second guess cloud is there.

SENATOR CHAMBERS: Why would he second guess? He's not

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liable, or she.

GARY GERNANDT: It's...absolutely, that's correct. He or she is not liable.

SENATOR CHAMBERS: So why is the cloud there in that person's mind? Was it in your mind when you were an officer?

GARY GERNANDT: Yes, sir, Senator.

SENATOR CHAMBERS: You represent a part of south Omaha. Are you aware of chases that have taken place in residential areas of south Omaha?

GARY GERNANDT: Yes, sir.

SENATOR CHAMBERS: Are you aware of chases that have taken place in residential areas of north Omaha?

GARY GERNANDT: Yes, sir.

SENATOR CHAMBERS: Are you aware of the fact that those judgments are being paid by...in the main for chases that have taken place in residential areas?

GARY GERNANDT: There have been. In my capacity on the city council some judgments that have been paid, yes, sir.

SENATOR CHAMBERS: And you feel that officers should not have to think twice when they're going to chase in a residential area.

GARY GERNANDT: I think that they should be able to do their job as they have been trained, sir.

SENATOR CHAMBERS: Do you think the public feels that police chases are to occur in residential areas? By residential, I mean where there are family dwellings, maybe apartment houses, children, playgrounds, school yards, old people going to the store crossing the streets. You think that chases ought to occur in those areas and if they do occur and an innocent party is harmed that society should not pay for this policy which society agrees ought to be in place?

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GARY GERNANDT: I think with the training that officers have now, to answer the first part of your question in regards to residential areas, that they look at that a lot closer now. Yes, I believe the cloud is still there but should a person, a third party that is injured because of a chase through, as your example states, a residential area, I believe that there would be other measures as Mr. Mumgaard has stated that we ought to look at as opposed to having strict liability.

SENATOR CHAMBERS: My final question. Suppose I tried to cut a deal...this is not the question but I tried to cut a deal with a federal representative and there was no taking of it.

GARY GERNANDT: I was not aware of that, sir.

SENATOR CHAMBERS: How about if we...if I would agree to allow the existing law as it is to be repealed and I would substitute any police chase which occurs in a residential area and an innocent third party is harmed, shall be deemed negligence per se which means the mere fact of chasing in a residential area is in and of itself negligent. You know people live there. You know children are there. And I hear cops saying so many times when they shoot somebody, well, yeah, we're trying to save people's lives. There are children, there are women, there are old people but when they're doing the chasing and creating the danger suddenly those people become nonpersons. So would you agree to my saying that I will let the law be repealed but in the same bill that repeals it we would make it negligence per se for a police chase to occur in a residential area? That's negligence per se...

GARY GERNANDT: I would like...

SENATOR CHAMBERS: ...and if a person is injured then you go back to what exists now since that's negligence per se. Then there would be strict negligence. I mean strict liability, it would seem to be but we have defined negligence. The common law defines negligence. Now Mr. Mumgaard loves that, failure to exercise due care. The Legislature could say, we feel it's an absence of due care any time a police chase occurs in a residential area. Would you agree with that, that due care is not being exercised

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when a chase occurs through a residential area?

GARY GERNANDT: I would agree to the point that I would love to be part of that debate out on the floor or listen to that debate out on the floor.

SENATOR CHAMBERS: But you're not willing to cut a deal right now?

GARY GERNANDT: No, sir.

SENATOR CHAMBERS: Then your bill may not get to the floor. But if it does, you need to help Senator Friend get 33 votes.

GARY GERNANDT: Yes, sir.

SENATOR CHAMBERS: I don't have any more questions.

SENATOR BOURNE: Thank you. Further questions for Councilman Gernandt? Seeing none, thank you. Thanks for coming down today. Further testifiers in support?

MARK SUNDERMEIER: Good afternoon. My name is Mark Sundermeier. Last name is spelled S-u-n-d-e-r-m-e-i-e-r. I'm a captain with the city of Omaha Police Department. We are appearing in support of Senator Friend's bill, LB 200. We would like to return to the status that all other states operate under. The police do not, and I want to emphasize to you, we do not want the freedom to chase at will, willy-nilly. We want to be accountable for what we do and we also want to be accountable for what we don't do. The current law creates a situation where officers could do everything right and still be wrong. It sends a contradictory and confusing message to our officers. Under current practice, and that will not change, pursuits are tightly and closely regulated by supervisors. Supervisory oversight is a mandatory part of any pursuit activity. Policy that is enacted by the police department or by Legislature can and does, at times, encourage people to run from police when they otherwise would not and when they would otherwise just peaceably have pulled over and given up. We do ask that the law be changed to hold police accountable when they are wrong and not to punish government entities when their employees do nothing wrong. Thank you.

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SENATOR BOURNE: Thank you. Questions for...is it Officer or Lieutenant?

MARK SUNDERMEIER: Captain.

SENATOR BOURNE: Captain Sundermeier. My apologies. No questions, seeing...Senator...(laugh)

SENATOR Dw. PEDERSEN: Yes. Do you...

SENATOR BOURNE: Actually, Senator Pedersen has a question.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Officer Sundermeier, this bill...I'm sorry, I had to leave for a little bit but I know this bill...I've been here for 12 years in this committee and heard this bill and I'm sure Senator Chambers has heard it longer than that. But do...the way it sits now, the way statutes are is not deterrent to police officers in any way, shape, or form, is it?

MARK SUNDERMEIER: One thing the police officer prizes is professional competence and a police officer does not want to be found in a court of law to be wrong in a situation. And this sends that message.

SENATOR Dw. PEDERSEN: But this is liability. If somebody's made a mistake...I mean, if we're wrong just by making a mistake that doesn't make you any worse officer...I mean, any worse officer than what you were before. I'd like to bring it back to the dollars.

MARK SUNDERMEIER: Okay.

SENATOR Dw. PEDERSEN: And the dollars because...and when I first heard this bill some years ago I was in quite a bit support of it. But I have a little problem with the fact that if there has been real negligence whether it be purposeful or unpurposeful, it's not done on purpose in most cases. But the person who's harmed (inaudible) should still be made right and the only way we do that in our society is through dollars. I don't feel that it's a good idea to put policemen down with this particular bill because I don't see it as putting policemen down or as hurting them in their

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work because I respect them and am in very much support of what they've done and thank them for their work. But they can make mistakes too and you're not saying they can't. But if a mistake is made and somebody has lost something not at their own will, the only way we can make them whole in our society...or not whole, partially returned to them is through dollars.

MARK SUNDERMEIER: And I agree with you and I think that the people who should be held accountable are those who are responsible.

SENATOR DW. PEDERSEN: Thank you.

SENATOR BOURNE: Thank you. Further questions for Captain Sundermeier? Senator Chambers.

SENATOR CHAMBERS: Captain Sundermeier, have you read the existing law at any point?

MARK SUNDERMEIER: Yes, sir, I have.

SENATOR CHAMBERS: Where in there is any reference made to culpability or fault on the part of any officer no matter how a chase was conducted?

MARK SUNDERMEIER: I don't see it in there.

SENATOR CHAMBERS: So then how can this reflect negatively on the police officer?

MARK SUNDERMEIER: Well, I understand your point. Officers have a professional pride in not being sued and...

SENATOR CHAMBERS: The officer's not sued.

MARK SUNDERMEIER: That's not how they feel about it. I understand that they're not personally liable...

SENATOR CHAMBERS: I don't care what they feel. Cops are accustomed to getting their way by saying, this is how I as a cop feel and, buddy, you do what I say. Captain Sundermeier, you are a very intelligent man and that's why I would like you and I to stick with the law. The law does not make the cop wrong, does it?

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MARK SUNDERMEIER: Not the way it's written, no.

SENATOR CHAMBERS: Aren't we supposed to deal with the law the way it's written?

MARK SUNDERMEIER: I understand, yes.

SENATOR CHAMBERS: So wouldn't it behoove you and other command personnel to explain to these officers what the law is? If they're operating under the misperception that the law does one thing when, in fact, it does something else why do you all let them keep that misperception? Why do you let them continue to incorrectly believe that this law says that the cop is wrong?

MARK SUNDERMEIER: I can report to you how officers feel about things. I can't always change their minds. That is one of the smaller of my reasons for advocating repeal of this statute.

SENATOR CHAMBERS: So we should repeal the law based on the ignorance of people who don't understand the law and not look at the equities involved and the policy of the Legislature intended. Because there are people who don't understand the law we ought to repeal it? That's what you're saying.

MARK SUNDERMEIER: I...

SENATOR CHAMBERS: These cops think that it reflects on them. Therefore we ought to repeal it.

MARK SUNDERMEIER: I don't believe that's what I said.

SENATOR CHAMBERS: Then what interest do you have in being here because you don't formulate policy for the city? You're not a legislator. This does not restrict the power of police to chase, it does not regulate chases. Why are you even here then if it's not because you want to tell us that cops misunderstand the law?

MARK SUNDERMEIER: I'm here because it is in the interests of the city of Omaha and the Omaha Police Department to see that this law is repealed.

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SENATOR CHAMBERS: Were you sent here by somebody in the city of Omaha administration to testify against this bill?

MARK SUNDERMEIER: Yes, sir, I was.

SENATOR CHAMBERS: Who sent you?

MARK SUNDERMEIER: Chief Warren.

SENATOR CHAMBERS: And did Chief Warren explain why the police division has an interest in overturning the policy of the Legislature that in no way impacts on how the police do their job?

MARK SUNDERMEIER: Chief Warren suggested that I talk to Mr. Mumgaard in formulating my testimony which I did.

SENATOR CHAMBERS: Are you and the chief invited into the inner sanctum of the city council when they're formulating policies for the city?

MARK SUNDERMEIER: I am not. I'm not sure if the Chief is or not.

SENATOR CHAMBERS: He's not a lawmaker, is he? He carries out the law; he doesn't make the law. He doesn't formulate the policy, does he?

MARK SUNDERMEIER: I could testify to the invitations I've received or not received. I don't know what invitations the Chief has received.

SENATOR CHAMBERS: Captain Sundermeier, you probably don't have statistics on it because I definitely don't. Do you think most cities in this country...I'm not talking about state...most cities that the police force has a police union, do you think in most cities there is a union or in most cities there would not be a union?

MARK SUNDERMEIER: I do not know.

SENATOR CHAMBERS: Do you think there are more large cities or more small cities in this country?

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MARK SUNDERMEIER: Anecdotal, I believe there are more unions in larger cities than in small...more police unions in larger cities than in smaller cities.

SENATOR CHAMBERS: Me too. But there are far more small cities than there are large cities.

MARK SUNDERMEIER: Okay.

SENATOR CHAMBERS: How many unions are you aware of in Nebraska, police unions?

MARK SUNDERMEIER: I belong to one.

SENATOR CHAMBERS: I know that. But I meant, are you aware of police unions in any other cities?

MARK SUNDERMEIER: Douglas County Sheriffs Office has a Fraternal Order of Police which is their negotiating unit and the city of Lincoln has a police union.

SENATOR CHAMBERS: Okay. Are you aware of any besides those three?

MARK SUNDERMEIER: I am not, no.

SENATOR CHAMBERS: That have unions. I'm not either. So then by your reasoning, since the majority of cities in this state and in this country don't have unions, shouldn't we abolish the police union in Omaha, Lincoln, and the Douglas County Sheriffs division if we're going to base it on numbers?

MARK SUNDERMEIER: I will tell you, you've totally lost me with that line of reasoning.

SENATOR CHAMBERS: I don't think so. You have said that this is the only one that...maybe you didn't say it. Maybe some of the others did. You don't feel that the fact that Nebraska is the only state with a law like this is an argument for repealing it then, do you?

MARK SUNDERMEIER: No, I believe that it is an argument for repealing it.

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SENATOR CHAMBERS: Then why wouldn't it be an argument for abolishing unions because the majority of cities don't have police unions? I lost you again?

MARK SUNDERMEIER: That's where you lost me. I don't see the connection.

SENATOR CHAMBERS: I don't think I have any more questions (laugh).

SENATOR BOURNE: Thank you. Further questions for Captain Sundermeier? Seeing none, thank you.

MARK SUNDERMEIER: Thank you, sir.

SENATOR BOURNE: Next testifier in support?

LARRY THOREN: (Exhibit 7) Larry Thoren, T-h-o-r-e-n, Larry Thoren, Chief of Police, city of Hastings testifying on behalf of the Police Chiefs Association of Nebraska in support of this bill. In my written testimony, please excuse my typographical errors where I included police officer rather than the entity that the police officer works for. This is a bill that basically places absolute liability on political entities for the behavior or conduct of officers, whether or not the officer did something right or wrong. It's technically special treatment. And many times I've testified here before and there's been comments about special treatment of police officers. If this act is repealed, we're still liable under the Tort Act. We're still liable for actions that we do wrong. Reminiscing, sitting listening to testimony, as starting this business in 1969 the atmosphere of this business is much changed sitting here in 2005. I was in another state in 1981 but I can understand if Nebraska chases were similar to the ones I experienced. I can understand why this law was enacted and sent the message to law enforcement to clean its act up on chases. The International Association of Chiefs of Police in which I sit on the executive committee has very seriously examined police chases and has brought out policies and has suggested policies on chases. Back in 19...I'm trying to remember. I know in 1969 we did not have policies on police chases. I know somewhere in the early eighties police chases became to the forefront because of some of the tragedies that did occur or because of the tragedies that

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did occur. And as policies became formulated in the late seventies and early eighties so I understand that. But I think we're dealing in a different time now. We...Chiefs are very concerned about chases. We have very strict policy on chases and we monitor them very closely. What questions can I answer?

SENATOR BOURNE: Thank you. Questions for Chief Thoren? Senator Chambers.

SENATOR CHAMBERS: I just have one. And depending on your answer, I might have to ask a follow-up but it's not going to be a string of questions. How many officers are there on your police department?

LARRY THOREN: Thirty-nine officers.

SENATOR CHAMBERS: How many of them have told you that because of this law that exists now, they did not conduct a chase? Let me ask it a different way. Have any of them told you that?

LARRY THOREN: I have not been told that.

SENATOR CHAMBERS: Okay. Thank you. Oh, one other question. I've stated that the vast majority of these chases occur because of traffic violations and I didn't hatch that out of my head. There have been studies after studies after studies but I'm going to ask you for your independent view. What do you think the majority of police chases are triggered by?

LARRY THOREN: The majority of the police chases and what the definition of the police chase probably needs to be refined because Nebraska courts have determined that if I see someone coming at me and I clock them by radar and they're speeding, and I pull to the right to turn my lights on to turn around and that person accelerates and crashes I'm liable before I even get an opportunity to start pursuing that subject. Most will start either on traffic violations or coming up into an area where you start to check out a car and that car takes off.

SENATOR CHAMBERS: Right, but it's not because they think that the person is a felon or a felony was committed. And

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then this is the other question. Are you aware of cities which do not allow police chases?

LARRY THOREN: Yes, I do.

SENATOR CHANGES: Okay. Because I'm aware too but I don't want to go off into that. I'm trying to focus on what the law and what the proposal is so that's all I'll ask you. Thank you.

LARRY THOREN: We agree, this is a very serious issue and police chases put police officers and police chase in difficult situations. People will be mad because we don't catch the bad guy. They'll be mad if we try to catch them and something happens.

SENATOR BOURNE: Thank you, Chief Thoren. Further questions? Seeing none, thank you. Next testifier in support and if the...is this the last testifier in support? Would the opponents to the bill kind of make their way forward to the on-deck chairs? Welcome to the committee.

LAURA PETERSON: Good afternoon, my name is Laura Peterson, P-e-t-e-r-s-o-n. I'm agency counsel for the Department of Administrative Services. I'm also the state risk manager. I'm appearing to testify in support of LB 200. I certainly understand the policy reasons for the Legislature's choice to have strict liability for damage caused to an innocent third party during a pursuit. However, as a manager of the state's risk and insurance programs I believe it's important for me to make you aware of the ramifications of the pursuit law as it is now on the insurance program for the state. We are the only...you've already heard, the only state with a strict liability law. Because our law is unique, it provides a problem for underwriters for our insurance in that they can't compare effectively our losses to the losses of other states or other similar entities. Because we are strictly liable for any damage and particularly because of some of the expansion of the proximate cause portion of the law, those things we could otherwise use to our advantage with underwriters such as department policies, employee training are unpersuasive with the strict liability law. A policy where, if there's an injury there's automatically a loss, is not an attractive risk to an underwriter for obvious reasons. The fact that unlike political

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subdivisions in many other states there is no cap on the state's liability from such an incident coupled with the joint and severable liability for pursuing with a political subdivision simply adds to the unattractiveness of our particular program to insurers. These factors have led to very limited options for the state in purchasing insurance. What we have had to do is bundle our insurance policies including real property and some of our other insured lines with pursuit to make the entire program marketable at all. Even with the bundled package we have fewer companies who are interested in providing coverage to the state and we have to accept higher self-insured retentions and lower coverage limits to maintain our premiums at reasonable or acceptable levels. For example, we previously had a \$500,000 self-insured retention per deductible per occurrence for vehicular pursuit. The minimum self-insured retention for the state today is a million dollars per occurrence. Even with the high self-insured retention it's estimated that the portion of the state's auto liability insurance premiums directly attributable to pursuit is between \$600,000 and \$700,000. The premium savings would be in addition to the claim savings. Although it's difficult to predict the future claims associated with pursuit, the state has paid out of our self-insured retention portion over a million and a half dollars for pursuit claims over the last six years. And the insurance companies who insure the state have paid over \$5 million. Finally, if LB 200 is advanced and passed, I expect the state would gain access to insurance markets currently unavailable to us. Presumably, this additional competition between the insurers would further decrease our insurance premiums. I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Questions for Ms. Peterson?
Senator Chambers.

SENATOR CHAMBERS: Ms. Peterson, you work for somebody. Who directed you to come over here and speak against this bill?

LAURA PETERSON: Well, I work for the Department...

SENATOR BOURNE: Excuse me. Speak for this bill. We're in...she's still a proponent...

SENATOR CHAMBERS: Oh, yes, speak for this bill and against

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the present law?

LAURA PETERSON: I don't know that I was directed to...I have talked both with the Department of Administrative Services and the Policy Research Office but essentially when we read the bill we offered that here's what the fiscal and other ramifications on the insurance program are. Should I go to the Legislature and just be sure...I think it's important when you're making this kind of policy decision for you to at least know, you hear a lot about what it does on the patrol side but...

SENATOR CHAMBERS: Okay, okay. You're here and those with whom you discussed this bill on the Scrooge principle where you look only at dollars and not the harm that may be occurring to people as a result of chases. Isn't that true?

LAURA PETERSON: Yeah, essentially, I want to be sure that we're making you aware of that side of it. I think other people have well covered the ramifications to those who are injured.

SENATOR CHAMBERS: No, no. I'm not talking about what other people said. The only reason you came over here was to talk about insurance issues. Is that true?

LAURA PETERSON: I'm responsible for the insurance and the financial ramifications for the state. I'm also responsible for administering the Tort Claims Act for the state.

SENATOR CHAMBERS: And you have no interest or any concern whatsoever in the capacity you came over here today in the injury to people who are innocent and harmed by police chases. You have no interest in that whatsoever in the role that brings you here today. Isn't that true?

LAURA PETERSON: I'm not advocating one way or another related to that. That's right. I don't want to say I'm not interested in it because certainly it's important but I don't have a strong position one way or the other.

SENATOR CHAMBERS: So if 30 small children had been injured as a result of police chases and some were paralyzed from the neck down, some suffered amputations, some suffered brain trauma that would hinder their ability to learn or

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exercise memory, you would still be here today saying that we should repeal this law to save the state some insurance premiums, wouldn't you?

LAURA PETERSON: I think...

SENATOR CHAMBERS: Wouldn't you?

LAURA PETERSON: I would certainly still be saying how much it cost us and the Legislature ultimately has a determination of whether...

SENATOR CHAMBERS: That's what...

LAURA PETERSON: ...but yes, I...

SENATOR CHAMBERS: That's what I'm asking. You would be here no matter how much damage had happened to the public, to the citizens...

LAURA PETERSON: To explain to you the cost of the program.

SENATOR CHAMBERS: ...you would still be here saying that we should repeal this bill.

LAURA PETERSON: Yes.

SENATOR CHAMBERS: You're aware that the state is not known as the most charitable entity if you're aware that they've cut poor people off Medicare, meaning that medical care they need. They've cut families off who have children. So, when you go back...you can mention that you did a very good job and you did such a good job that it made me talk about the hard heartedness, the coldness and the lack of human compassion of the state agencies and the people who come to this Legislature. But let me ask you a question because I don't want you to feel that I'm criticizing you for doing your job. Are you aware that our job is broader than the one you're paid to do over there where you came from?

LAURA PETERSON: Absolutely.

SENATOR CHAMBERS: If you were not paid to do that job and come over here and speak against the existing law, would you as a citizen have come over here and said we should repeal

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this law?

LAURA PETERSON: Probably not.

SENATOR CHAMBERS: If, despite the fact that you have come over here to speak against this law, I want people to see how serious this is and think about the position they've put themselves in. I'm not here to be people's friend who testify. I'm here to do what I think is best for the people who can't help themselves. If you left this building today and you were crossing the street and there was a police chase and you were struck and paralyzed from the neck down, would you remind yourself that you came over here to speak against this bill and based on that, say, well, I'm not going to seek any recovery from the state if it was a state trooper pursuing. I won't seek anything from Lancaster County if it was the Lancaster County sheriff. I will not seek any compensation from the city of Lincoln if it was a city cop. Would that be your position?

LAURA PETERSON: I don't know that my position would be exactly that. I think it's more likely that if the law were still in place, I would as everyone else does, avoid the proving of negligence and take advantage of the strict liability and recover from those who hit me. I think if the bill was not in place, I hope that I have provided for my family through my own personal insurance mechanisms of recovery to make up for what they...financially, you're never going to make up for what you've lost. But to at least cover...because I imagine that there is as much opportunity and probably more for me to be hit by someone who is uninsured or underinsured and not being pursued than by someone who is being pursued. So, hopefully, my family or my own personal needs are covered by other personal insurance that I've purchased.

SENATOR CHAMBERS: No...

LAURA PETERSON: So, but if the law were in place I would do what everyone else does and recover under it. I'm sure that I would.

SENATOR CHAMBERS: And that's what every citizen is allowed to do and expected to do. I would not tell anybody that because they spoke against the existing law that that binds

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them not to make use of it. The law is there to be used. But I find it interesting that not one person that I can recall has said that the law is bad, is evil or hurtful to society. They talk about well, it makes a cop think twice before he chases through a neighborhood. Well, it's harder to win this case if I'm a lawyer for the city. The premiums for insurance are too high but even they will wind up saying, but the law does good. It does good for those who can't help themselves and that's why I'm going to continue to be for this law as it stands and against those who are opposed to it and against those agencies and those cities that send people here to do what they came here to do. If they can come here to try to seek an action that's going to hurt the people then I don't owe them anything. They are the enemies of the people as far as I'm concerned. It's no money out of Mr. Mumgaard's pocket. It's no money out of your pocket. It's no money out of Captain Sundermeier's pocket. It's no money out of anybody's pocket. It's society saying that this is what's going to be done. There is in the minds of some people a principle known as social justice. And that means that certain standards are maintained. There are certain circumstances below which no member of society is going to be allowed to fall. That societies are brought together to help people in a collective way do what they can't do individually. And to have people come here today and acknowledge that there have been serious injuries, even deaths but, nevertheless, to make it convenient for the cops, to make it convenient for these lawyers who work for the city and convenient for the state who doesn't want to pay an insurance premium, we ought to forget those injured people and yet these are the same ones who on other occasions talk about, how about the innocent citizen. Don't you care about them? I care about them more than all the rest of these people because I will put something in the law and fight to maintain it. All they want to do when they say that is justify a cop who blew somebody away or went chasing through a neighborhood. And I know some of the people, by the way, personally who have been injured in these chases. I didn't know them before but after they were injured and found out about the law and that I was the one who put it there, they contacted me. So, I want you to know as I've said to some others, despite what I've said I understand the role in which you come as a representative of the agency that you're here for. But I wanted to give you an opportunity to reveal your human

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qualities and the fact that you or your family would make use of this law should you be unfortunate enough to have suffered what others have suffered and it is the law. That's all that I have.

SENATOR BOURNE: Thank you. Further questions for Ms. Peterson? Seeing none, thank you. Are there any further testifiers in support? Would the first testifier in opposition come forward?

ANN SASICH: Would you explain the lights to me? I'm sorry.

SENATOR BOURNE: You bet. Basically, you have roughly three minutes to...

ANN SASICH: And that's blue.

SENATOR BOURNE: Yeah, the red light will...

ANN SASICH: When yellow goes on that indicates...

SENATOR BOURNE: Yeah, yeah, I'm sorry.

ANN SASICH: Okay. That's okay.

SENATOR BOURNE: Do we need another chair?

ANN SASICH: No, I think we're good.

SENATOR BOURNE: You okay? All right. Whenever you're ready.

ANN SASICH: First of all, I'd like to thank all of you for hearing me today. My name is Ann Sasich. This is my husband, Peter Sasich and this is my son, Daniel Sasich, a beautiful young man.

SENATOR BOURNE: Could you spell your name?

ANN SASICH: Oh, yeah, you bet.

SENATOR BOURNE: Thank you.

ANN SASICH: It's Ann, A-n-n, Sasich, S-a-s-i-c-h. I'd like to explain to you, Daniel was involved as an innocent third

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party in a police chase in the year 2000 on March 1. This took place on 72nd and Giles. Daniel suffers from traumatic brain injury which was caused by an impact of the vehicle that they were pursuing. The vehicles were both going about 100, 120 miles an hour. I'm not sure of the police but if they were behind him there had to be some good speed. Daniel's chance of recovery is less than 1 percent. He will not recover. Daniel has been indicated by physicians that he will live for probably a good 30 years. I can tell you in Daniel's first year after this accident, the cost was over \$1 million to just medically maintain Daniel. That does not include the fact that my husband and I were off of work for seven months. It does not include the care at Craig Hospital in Colorado for four months, does not include the apartment and the food and the things that we had to take care of in that time and pay for. It does not include the air ambulance that had to take Daniel to Craig or the next year take him to Mayo's which is \$5,000 one way. We were thankful that we had a community that supported us unbelievably and we had friends and family that came forth and gave us money. And we had people offering my husband their vacation from his work. We're very lucky. We're also lucky and yes, we did have an insurance policy and we still do but insurance does not cover everything. Let me tell you, the battles go on every day. In his second year it was probably around \$200,000. He spent a month in the hospitals here in Omaha. He spent a month at Mayo Clinic and at Mayo Clinic we stayed at the Ronald McDonald House. And besides all of this and I don't even want to go into some of the expenditures because I do not know and I'm a little nervous now that he's coughing but I also have another child that we had to take care of. And so Peter and I split our time. We never left Daniel alone because I know...I am from the medical field and I had to retire. I take care of Daniel 24/7. I have a CNA that we pay and, thank God, that this bill that is in effect to this day was there because it cost out of our pocket, and this is just what I roughly ran off in my own head that I can think of, almost \$3,000 a month. That does not include what insurance pays. I am losing the insurance payment for physical and occupational therapy because Daniel will not improve. That is their rule. It is because he is just maintenance. So we will go out and we will pay for this on our own through the fundings Daniel has received. It is \$88 an hour to have one physical therapist and \$88 an hour to have one occupational therapist in our

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home. We also pay for craniosacral work for Daniel. There's a massage therapist that comes to our house and she is \$50 an hour. It does not include some of the medications that are not paid by insurance. Wipes, gloves, alcohol wipes, skin wipes, urological things that we need for Danny, nasal things, lotions, just basic care. Respite care, it does not pay for any of that. I pay a CNA with the two days that I do teach. I pay a CNA to come in my home. I see I need to conclude. And I just want to tell you that there are also some items such as EKG machines that have to be all rented, oxygen, oxygen purifiers. There are CPM units, kangaroo units that feed Daniel. Daniel cannot feed himself. He cannot move; he cannot speak. His awareness level is unknown. But there are days that he'll give you a great blink yes and a great blink no. And we hope to have more days of those. I do want to say that the people of Nebraska...I am here as an advocate not only for Daniel or other victims because this incidence does not...is not prejudiced. It will pick anybody out. We...and I am also here for the people of Nebraska. We put you in this position because we believed in you and we have faith in you and we look for you to take care of us. And, unfortunately, some police chases do happen and I'm not saying I'm not in support of that. The criminals cannot get the upper hand. And I am not angry at the police officers, not at all, because they had to make a decision. But as I teach my children, if you make a decision you better be prepared to be responsible for that decision. And whatever decision you make you are responsible for whether you are right or wrong. And I think that has to go for our police force and where this money comes from. I am sorry the police feel attacked. I would love to sit there and just talk to them and say, I don't blame you. Better judgment may be needed or better radio systems or better teaching. And, yes, as the years improve it does get better, hopefully, but these are the things that I would like to present to you today.

SENATOR BOURNE: Thank you. The committee...

ANN SASICH: And I would love to entertain questions.

SENATOR BOURNE: We really appreciate you coming down and...

ANN SASICH: You betcha.

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SENATOR BOURNE: ...putting a face to the other side. Thank you.

ANN SASICH: I mean, you just have to look at him to say, can you put a price on his life? I mean, somebody face me. Put a price on his life, you know. Tell me the...

SENATOR BOURNE: Thank you. Questions...

ANN SASICH: Thank you.

SENATOR BOURNE: ...for Mrs. Sasich. Senator Combs.

SENATOR COMBS: I don't have a question, just a comment. I just want to thank you for coming and sharing today and my heart goes out to you and your son. And I know that that's a great sacrifice and a gift that you've given him that nobody else can. And I really appreciate that and want to personally recognize it here and have it in the record. Thank you for coming.

SENATOR BOURNE: Thank you. Did your settlement come anywhere close to Daniel's medical bills?

ANN SASICH: What we did and, you know, we were told that we would probably just get what the insurance would pay, that we would not go above and beyond, that they would appeal it. So they said, you know, so another young man and which I forgot to mention, who I love dearly, was Joshua Brockington who died in the accident with Daniel. These were great kids, you know. They would have brought a lot of something to this earth but did it pay in full? Well, under some great advice from our lawyer and financial people and our tax man we purchased an annuity. And what that does is for ten years allows him so much money per year. And then also we had to put...and we had to fight to get in there, that if he was to run out of this money that Medicaid or Medicare, I'm not sure. I get mixed up which one is which, would help take over. They wanted to eliminate that. The battle was not easy, you know. For an innocent person we had to prove him innocent.

SENATOR BOURNE: You know, I've often heard that when a family is going through this, and I don't know if you were injured by the state or by a local subdivision because I

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think the law treats them differently and it doesn't matter which. But I've heard oftentimes families, it's like a knockdown dragout to even get the compensation from the political subdivision. And even if they have millions of dollars in medical bills it's hard to even get the maximum that the state, you know, the cap. Did you experience that?

ANN SASICH: I believe the cap for us, for both Josh and Daniel together was \$5 million. Gail, I believe got half a million and we received the rest because Daniel was long-term care. We had a lot of help. The hospitals dropped a lot of bills. They worked with us. They waited for because we could not pay them. You know, insurance couldn't pay it or wouldn't pay it. We could not pay them until the settlement was done and that was two-and-a-half years later after the accident, approximately two-and-a-half years. It was tough I have to admit. It should not have been and I think maybe that should be addressed next time.

SENATOR BOURNE: I've heard that there's oftentimes even though the damages are clear there's appeals and that, maybe some other testifiers will have a story as well. Are there further questions? Thank you.

ANN SASICH: Thank you.

SENATOR BOURNE: Again, we appreciate very much you taking the time to come down today.

ANN SASICH: You bet. It's time to feed Dan so we're probably going to leave in a little bit.

SENATOR BOURNE: Further testifiers in opposition to LB 200. Welcome.

SHELLEY STALEY: (Exhibit 8) Hello, my name is Shelley Staley and I am here to speak against LB 200. My son also was involved in a police chase in April of 2000. He was an innocent third party. I think I will always have questions as to why police chase. Why would an officer chase someone they suspect is driving drunk? If a person chooses to get into a car and drive drunk, he or she are not very responsible so most likely they are not going to do the responsible thing and pull over. The person driving drunk is already a danger to the public. Why would an officer

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increase the danger by chasing? An adult learns from childhood, you don't poke the tiger. The behavior of a drunk driver will eventually catch up to them. The drunk driver is just one example of how dangerous the situation can be. The innocent victims of police chases should not be blamed for spending taxpayers' monies. They are not the cause of the accident or the damages. If police officers want to catch someone for any reason, a minor traffic infraction or if they are chasing a mass murderer they should not endanger innocent people. The wisdom of the Legislatures have already decided in the past that they should be responsible. It should remain so. How long should they be responsible? From the beginning of the pursuit until it ends. Thank you.

SENATOR BOURNE: Thank you. Thank you, Mrs. Staley. Are there questions for Mrs. Staley? Thank you, appreciate you coming down.

SHELLEY STALEY: Thank you. Um-hum.

SENATOR BOURNE: Further testifiers in opposition to the bill?

STEVE LATHROP: Mr. Chairman and members of the Judiciary Committee, my name is Steve Lathrop, L-a-t-h-r-o-p. I am an attorney from Omaha, Nebraska, and I'm here on behalf of the Nebraska Association of Trial Attorneys. We are here in opposition to LB 200. That bill proposes an outright repeal of the Police Chase Liability Statute as we've discussed. Because this statute serves an important public purpose I am here to speak in opposition to the bill. The Police Chase Statute is in place to provide payment for the cost of an activity carried out for the common good. Every police chase starts with a policy decision. Government has made a decision that the public good is advanced when law enforcement chases criminals. These chases very often end in crashes. The victims of those crashes are randomly chosen by happenstance. The injuries are often catastrophic and the costs and losses that follow are beyond the resources of a single family to absorb. It is not fair and I would suggest bad public policy to place the burden of this activity of government upon a single family chosen by chance. The cost in money and human terms would wipe out most families. The Police Chase Statute is the human

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equivalent of eminent domain. When government wants to widen a street or a highway the property owners are compensated because the activity advances the public good. It would be unfair to require that the landowner be solely responsible for an activity which advances some public good. In the same way, police chases advance some public good and the costs should be shared by society and not an individual family. It makes no sense to pay someone for a few feet of their front yard but not compensate them when the loss is measured not in acres but in medical expenses, lost income, and disability. I would submit to you that if this bill passes, you will see more chases because of the absence of any strict liability. You will also see families wiped out, families like the Sasich's wiped out when they are left to their own resources which are quickly exhausted in these cases. And the medical expenses that aren't taken from these people before they are wiped out will be absorbed by Medicaid, that state agency or simply absorbed by the doctors and the hospitals who have provided the care. In short, police chases are an activity of government carried out for a common good. The consequences of this activity carried out for a common good should be shared as all other activities of government and not assigned to those who are randomly chosen by chance. Thank you, and I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Questions for Mr. Lathrop? Seeing no questions, thank you. Thanks for coming down today.

STEVE LATHROP: Sure.

SENATOR BOURNE: Are there any other testifiers in opposition to the bill? Are there any testifiers in a neutral capacity?

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k. Bush makes political hay telling the listeners that tort reform is the answer. Nebraska has had tort reform since 1985. The demos are hiding. They don't tell what the results have been in the last 30 years in Nebraska. I would say Nebraska cases are open and closed. Do the injured have to get a lawyer? What compensation does an attorney get? I believe there should be a cap on attorneys' fees. Thank you.

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SENATOR BOURNE: Thank you. Are there questions for Mr. Hedrick? Seeing none, thank you. Are there other testifiers in a neutral capacity? Senator Friend to close.

SENATOR FRIEND: Thank you, Chairman Bourne. Only to say to the Judiciary Committee, thank you for the debate. And also to the Sasich family, I wanted to thank you for coming out because I'm going to say something to this room that I promised the Legislature I wouldn't say again but I'm going to go back on my promise. I don't know how many people in this room know how you folks feel but I'm one of them because I've got a sister in very much the same condition that your son is in. She lives in a nursing home in Valley and she was hit by a reckless driver in 1987 and our family went through a very similar situation that you're in right now. So the reason that I bring that up and the reason I'm here in front of you right now to tell you this to your faces and everybody else in this room, this is not economic for me. It wasn't economic for my family either. This is not economic; this is philosophical. There's cause, there's blame, there's effect in everybody's lives. I've lived it; the Sasich family has lived it; I'm going to evoke your name again because I feel akin to you. And I'd like to talk to you after we're done here if you don't mind, folks. But the bottom line is we've had this debate. I don't know where this bill will go. I think that there are some philosophical disagreements. Maybe some things that Senator Chambers and some of the other questions that the folks asked, we can come to some conclusion, possibly even come to better law in the future even if it doesn't look like this one. I want to thank you for your time again. That's all I have.

SENATOR BOURNE: Thank you. Questions for Senator Friend? Seeing none, thank you. That will conclude the hearing on LB 200. The committee is going to stand at ease for ten minutes.

RECESS

SENATOR BOURNE: Senator Stuhr is here to open on LB 260. Senator Stuhr.

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SENATOR STUHR: Thank you, Senator Bourne and members of the Judiciary Committee. I am Senator Elaine Stuhr, S-t-u-h-r, and I am here to introduce LB 260. LB 260 creates a task force to look at the issue of human trafficking in Nebraska. This past fall I was fortunate enough to be able to host along with Senator Landis and Senator Beutler a Dr. Leslie Wolfe, the president for the Center for Women Policy Studies. Dr. Wolfe spoke about the topic of human trafficking and how states need to work with federal agencies to address this growing problem in our country. At the urging of many who attended this program, I'm introducing this bill to study the issue. Specifically, LB 260 creates a task force of 16 people. Section 2 of the bill does explain who will be selected for the task force. Section 3 details the duties of the task force. Those duties include collect and organize data on the nature and extent of trafficking in persons in the state, evaluate the process of the state in preventing trafficking, protecting and providing assistance to victims of trafficking and prosecuting persons engaged in trafficking, identify available resources and programs that provide services to trafficking victims, evaluate approaches to increase public awareness of trafficking, analyze existing state statutes for their adequacy in addressing trafficking and if such analysis determines that those statutes are inadequate, recommend revisions. Also, develop some recommendations to strengthen state and local efforts to prevent trafficking; hold three meetings open to the public to address these topics. Section 5 provides that a recommendation shall be made to the Legislature by December 31, 2005. Although I realize to many of you that this does not seem to be a pressing issue that has risen to the forefront, I do believe that because we are experiencing high numbers of immigrant population that this issue has the potential to be a concern in our state. Thus far, there have been a number of states that have passed state statutes, making trafficking a felony. In addition, other states have established a task force such as I am proposing in LB 260. So with that, I urge your support and would be happy to answer any questions.

SENATOR BOURNE: Thank you. Questions for Senator Stuhr?
Senator Pedersen.

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SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Senator Stuhr, do you not think that we should add those people who hire those people and give them gainful employment and know that they have been trafficking in this state as those that need to be prosecuted also?

SENATOR STUHR: I'm sorry, I didn't hear the first part of your question.

SENATOR Dw. PEDERSEN: The people who are employing these people that have been trafficking into the state...

SENATOR STUHR: Oh, oh.

SENATOR Dw. PEDERSEN: ...don't you think we probably should add them too?

SENATOR STUHR: Well, if they would come forward, you know,...

SENATOR Dw. PEDERSEN: I think it's something we need to look at also...

SENATOR STUHR: Right.

SENATOR Dw. PEDERSEN: ...because, you know, we put out enhancements there for this trafficking to happen. And I think we need to nip it in the bud.

SENATOR STUHR: That would be sort of one of the purposes of the task force to, you know, to look at all of these concerns.

SENATOR BOURNE: Thank you. Now, Senator Stuhr, this is just a study. It's not creating an offense of trafficking or anything.

SENATOR STUHR: No.

SENATOR BOURNE: It's a study. Okay. Now isn't there a federal statute? I think it's called a Mann, M-a-n-n Act that deals with trafficking of individuals across state lines for immoral purposes? Are you...?

SENATOR STUHR: Well, I am not aware of that and, you know,

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will certainly check into it. But since a number of the states already, you know, have passed legislation specifically dealing, you know, with the issue, do you have any idea when that was?

SENATOR BOURNE: Oh, it's an old act...

SENATOR STUHR: Oh, okay.

SENATOR BOURNE: ...but, and I don't know how you overlap or...

SENATOR STUHR: Right.

SENATOR BOURNE: ...or maybe it's not even a law any longer, I don't know. I just am familiar with the name.

SENATOR STUHR: I don't know but I just know that these...number of states have recently passed.

SENATOR BOURNE: Recently passed...

SENATOR STUHR: Um-hum.

SENATOR BOURNE: ...laws dealing with trafficking or studies?

SENATOR STUHR: Yes. Both, both. And I do have some handouts for the page if the page would deliver those. (See also Exhibit 9)

SENATOR BOURNE: Okay. Further questions for Senator Stuhr? Seeing none, thank you.

SENATOR STUHR: Thank you.

SENATOR BOURNE: First testifier in support of LB 260 and, again, we're going to make use of the on-deck chair so, hopefully, people are in the front row who are ready to testify. Welcome.

DANIELLE NANTKES: Thank you. Good afternoon, Chairman Bourne and members of the committee. My name is Danielle Nantkes, D-a-n-i-e-l-l-e N-a-n-t-k-e-s, and I'm a staff attorney and registered lobbyist for the Nebraska Appleseed

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Center for Law in the Public Interest. We are here today in support of LB 260 as human trafficking and forced labor is really a modern-day horror that cannot be tolerated. The U.S. Department of Justice estimates that anywhere from 18,000 to 20,000 people are trafficked within the United States each year. This issue is alive and well in Nebraska and it has been very difficult to bring forward since there is little protection existing for people who are victimized. Traffickers engage in physical and psychological violence to control their victims. LB 260 wisely begins by creating a task force with broad representation, offering the possibility of addressing the issue with sensitivity and in a manner that acknowledges the many complexities involved. Again, we'd urge your support of LB 260. And I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there any questions? Are there statutes on the books now that would if somebody's keeping someone against their will, isn't there a law against that now?

DANIELLE NANTKES: That might be covered by some aspects of false imprisonment rules, I believe. But this is a little bit of a broader topic that intersects much with our immigration law and then also it has a lot of intersecting issues with ties between federal and state laws and various state laws since it involves the travel across those state lines and into various jurisdictions so.

SENATOR BOURNE: Okay, thank you. Any further questions? Seeing none, thank you very much. Next testifier in support.

KRISTEN HOUSER: (Exhibits 10, 11, 12) Good afternoon. My name is Kristen Houser. It's H-o-u-s-e-r. I am the chairperson of the Dignity Cooperative which is a coalition of organizations and citizens concerned for the welfare of people in prostitution. We are based in Omaha. And I'm here to support LB 260. Trafficking is a global problem. Rural states across the United States have seen an increase in trafficking for prostitution and labor in recent years. I believe that we're not exempt from the trend here in Nebraska and that Nebraska is likely a source location as well as an end destination for traffickers. Research tells us that traffickers often have ties to organized crime but

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that the degree of that connection is not very well known; it varies. We know that other organized criminal activities aren't foreign to Nebraska. We know that large quantities of drugs and drugs money are regularly intercepted along our Interstates 80 and 29. And because these roads bisect the country I think it's logical to assume that they're also being used to transport and traffic human beings throughout the country. We know that undocumented citizens are drawn to Nebraska to work as migrant farmhands, in meatpacking and processing, in construction as well as other services. Journeys into the United States are often fraught with rapes, beating, food and water shortages, threats, and other exploitive treatment at the hands of the traffickers. Many refugees from around the world report similar experiences and Nebraska is also home to several refugee populations. It's likely that survivors of trafficking are living among us in silence and are not receiving medical care, psychological care, or other support to help them deal with what has happened to them on their way here. The word trafficking usually makes us think about people who are from other countries but it's also true that women and children are trafficked from one United States location to another for use in prostitution, stripping, pornography, and other sexually explicit businesses. I provide an article to you from the San Francisco Examiner which cites Nebraska as a source for teen girls who are on the streets of California. My colleagues in Omaha have met women in prostitution in Omaha who have been brought here from other places. I ask that we remember to include them in our work and consider them equally deserving of protection. I've spent 15 years working against sexual violence, the past six in Nebraska and I've attempted to raise awareness about trafficking and prostitution. And I'm sorry to say that it's an issue few people take very seriously. The reality of trafficking is extremely ugly. I means repetitive rape, physical abuse, torture, slave labor conditions, and a variety of other human rights violations. This ugliness makes an issue that people would rather look away from and avoid. So the task force will have a difficult task in front of them to see what they would rather not and to discover what victims are terrified to disclose. The bill is the first step in addressing this issue. I commend Senator Stuhr for taking this issue on and hope that the bill is enacted. Discovering the true extent of this problem will take tenacity, time, and likely the efforts of people far more

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large than what is outlined in the bill so I'm also happy to provide suggestions for additional task force members.

SENATOR BOURNE: Thank you.

KRISTEN HOUSER: Um-hum.

SENATOR BOURNE: Questions for Mrs. Houser or excuse me, Ms. Houser. I apologize. Seeing none, thank you.

KRISTEN HOUSER: Okay.

SENATOR BOURNE: Further testifiers in support?

TARA MUIR: (Exhibit 13) Good afternoon, Senator Bourne and members of the committee. My name is Tara Muir. It's T-a-r-a M-u-i-r. I'm the legal director of the Nebraska Domestic Violence Sexual Assault Coalition. Attached to a copy of my testimony is our network brochure that for some of the new members will bring you up to speed on what our network does. But I'm here today on behalf of the network, 22 domestic violence and sexual assault programs and I'm here on behalf of the many victims they serve in every county of our state. We would like to thank Senator Stuhr and the many senators who cosponsored this bill for the attention to this important issue. What we know about victims of domestic violence and sexual assault is they are suffering in silence. Telling a complete stranger or even your best friend that you're a victim of rape or physical violence at the hands of a loved one or perhaps at the hands of the person who employs you or perhaps the person who brought you into this country. It's a tremendous act of courage and because we know it's so courageous because we know about the threats and the coercive tactics that rapists, pimps, batterers, and these traffickers use. When you're an immigrant, cultural and language barriers can make the telling even more difficult and if you're an undocumented immigrant brought here under the definitions of this bill we're talking about today, forget about trusting anyone enough to tell your story to. However, there has been a few victims who have shown up at our programs. Only in general, I can say that we hear stories from them about frequent rape by bosses at businesses who employ undocumented immigrants and we've heard stories of people thrown out of vehicles in the middle of very rural counties

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that don't speak any English. What we can learn from them before they disappear is pretty much only that they are beaten and left for dead by someone they feared yet could not turn that person in to law enforcement. In my work at the coalition I supervise a grant program that provides funding for civil attorneys for victims in the many legal issues that they face. Part of that program includes training and technical assistance for advocates who serve the victims and attorneys who assist immigrant victims of domestic violence and sexual assault. There are several relief options available for these victims including one for victims and potential witnesses of severe forms of trafficking. The regulations for this T-Visa, that's what it's called are still not official but I do know already that two applications for this visa have been sent in from an Omaha attorney. Because of victim silence and these few stories I've talked about, we believe this task force would be very important in helping our programs as well as all service organizations in the state understand the numbers of people affected in our state and just what that population looks like so we can serve them better. Thank you and I'm happy to take any questions.

SENATOR BOURNE: Thank you. Questions for Ms. Muir? Seeing none, thank you.

TARA MUIR: Thank you.

SENATOR BOURNE: Further testifiers in support?

LARRY THOREN: (Exhibit 14) Larry Thoren, T-h-o-r-e-n, Chief of Police, city of Hastings, representing the Police Chiefs Association of Nebraska and we would like to be on record on supporting this project, and would be glad to provide any assistance with this project.

SENATOR BOURNE: Thank you. Questions for Chief Thoren? Seeing none...oh, excuse me. Senator Friend.

LARRY THOREN: Yes.

SENATOR FRIEND: I just had one question. You could be pushing your luck, Chief Thoren. Senator Chambers maybe he's a little tired, I don't know (laughter).

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SENATOR CHAMBERS: We're on the same side (laugh).

SENATOR FRIEND: I didn't have a question, just a stupid comment. Thanks.

LARRY THOREN: I'm probably a thorn on his side on this one (laughter).

SENATOR CHAMBERS: Yes.

SENATOR BOURNE: Further questions? See none. Thank you. Further testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Stuhr to close.

SENATOR STUHR: Thank you, Senator Bourne. I think that you can see that there is a great deal of interest from many, many different groups and I would hope that the committee would advance this proposal. Thank you.

SENATOR BOURNE: Thank you. Questions for Senator Stuhr? Seeing none, thank you. That will conclude the hearing on LB 260. Senator Stuhr to open on LB 100.

LB 100

SENATOR STUHR: Thank you, Senator Bourne and members of the Judiciary Committee. I don't often come before your committee and to have two bills is quite a privilege.

SENATOR BOURNE: Well, you're welcome here.

SENATOR STUHR: I am Senator Elaine Stuhr, S-t-u-h-r, and I represent the 24th Legislative District. And I'm here today to introduce LB 100. LB 100 expands current statute protections regarding law enforcement animals to include certified law enforcement dogs owned and controlled by city and county law enforcement agencies. At this time, only law enforcement dogs owned and controlled by the Nebraska State Patrol are protected in statute. I want to take just a few minutes to give you some background on this bill. Last year I was contacted by the Seward County Sheriff's Department about a situation that had occurred in that county involving a police dog. The simple facts were that the dog was injured by a man fleeing police officers. At that time it

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became evident that the county-owned dog was not protected under current statute. Working with the Seward County Attorney's office and the Seward County Sheriff's Department, a bill was developed last session to address this issue. Unfortunately, as most of us know, in a short session time often becomes a factor. Because of that bill last year, I was contacted by the Canine Association of Nebraska and urged to introduce a similar bill this year. LB 100 is the result of my work with this group. I believe as drug use in our state continues that we're going to see the use of more and more enforcement dogs needed to work in our cities and counties. In closing, LB 100 proposes to expand the definition of police dogs, not only controlled and owned by the State Patrol but also for dogs working for city and county law enforcement agencies. In closing, one other thing that I would like to add is that just some time ago my office was contacted by the Game and Parks Commission about this bill. Although they do not own a law enforcement dog at this time, they were looking to purchase one in the near future. There was concern from them that there was no language in this bill that specifically included the Game and Parks Commission whose officers are considered law enforcement officers. I would like the record to reflect that although we do not believe that the language needs to be changed, it is the intent that a Game and Parks Commission law enforcement dog would also be protected under this statute. With that, thank you.

SENATOR BOURNE: Thank you. Questions for Senator Stuhr?
Senator Chambers.

SENATOR CHAMBERS: Senator Stuhr,...

SENATOR STUHR: Yes.

SENATOR CHAMBERS: ...it's not a question but a comment. I do have some interest in what the bill is saying but I'll save my questions to others who will follow you.

SENATOR STUHR: All right. Thank you.

SENATOR CHAMBERS: Okay.

SENATOR BOURNE: Thank you. First testifier in support? Again, people are signing in as they get ready to be the

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next testifier. Thank you. You're welcome to begin.

EDDY BURMOOD: Thank you. Eddy Burmood, E-d-d-y B-u-r-m-o-o-d. I'm a police officer with the city of Hastings. I'm also a canine handler. I'm here representing the Nebraska Police Canine Association in support of this bill. Thank you, Chairman Bourne and members of the Judiciary Committee for taking the time to hear us. I'd also like to thank Senator Stuhr and her staff for her efforts for introducing this bill. To cut back on the redundancy of what you're going to hear this afternoon, I'm only going to speak on some comments that I believe that this bill also will affect in addition to the obvious of amending the definition of a police service dog. I believe that doing this will grant protection to those canines that are certified to the Police Standards Advisory Committee, their requirements that they set up for it. It also is a step forward in requiring all law enforcement canines and their handlers to be certified. I foresee this as a way to prevent bad incidents and bad case law concerning canine units in the state of Nebraska. And that concludes my comments and testimony. I will entertain any questions.

SENATOR BOURNE: Thank you.

EDDY BURMOOD: Thank you.

SENATOR BOURNE: Questions for Officer Burmood? Senator Chambers.

SENATOR CHAMBERS: What is it that may lead to a greater usage of these dogs in law enforcement? What is the trend developing that would lead to more of these dogs being used?

EDDY BURMOOD: The drugs on the streets, the use of meth that's prevalent in Nebraska.

SENATOR CHAMBERS: So what does that mean? You...the dogs will be used against people?

EDDY BURMOOD: No, the dogs are used in various applications and some of them are used for patrol work, apprehension of criminals, tracking of children or Alzheimer's patients.

SENATOR CHAMBERS: Well, let me ask you this. Do you have

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dogs that are doing that now?

EDDY BURMOOD: Yes, sir.

SENATOR CHAMBERS: What do you need this change in the law for then?

EDDY BURMOOD: Currently, only the State Patrol dogs are protected by law. We're trying to...

SENATOR CHAMBERS: What do you mean by protected?

EDDY BURMOOD: If our animal is at home in the kennel and somebody comes up and harasses that animal and it causes him to spin around in that kennel or in the back of the patrol car, they can develop what's called torsion which causes their stomachs to flip and will kill that animal within 30 minutes. We have no recourse to charge anybody with harassment of that animal unless it's a State Patrol dog.

SENATOR CHAMBERS: Well, the state can control what the State Patrol does. We don't know what every little police force in the state is going to do with these dogs.

EDDY BURMOOD: And that's why the definition, Senator Chambers, is to certify police dogs under the Police Standards Advisory Committee.

SENATOR CHAMBERS: Well, on television in Omaha there was a dog at a certain location and I think he was under the control of a Douglas County Sheriff. If I have any of these facts incorrect I can get them straight but I want to make a point. It showed him jerking on the dog and slapping him and then when he was asked about it, he said, well, these dogs they got to be trained. And if they do something we don't think they should we got to correct them right on the spot. Well, now if he's got a dog that's so untrained that he has to do that he shouldn't be having that dog around people. And if he is so incompetent that he doesn't realize the dog is not trained enough to be put in the situation that dog was put in, that should not be. So in order that you will understand my general attitude toward this bill because I'm not going to grill everybody who comes here, I don't trust law enforcement to have these dogs. And the experience of my people in this country with dogs is not

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good. And I don't mean where we were breaking into buildings but trying to vote, trying to eat in a restaurant, walking down the street, and even on the highway. I came up on a situation and it involved the State Patrol. They had several young black guys just wandering around on the highway. Their car was stopped. No trooper was near them so I stopped and I asked one of them, I said, what's going on? He said, well, they pulled us over. I said for what? Well, they just told us, get out of the car so I went back to one of the troopers and I said, what are they stopped for? And I forget what he said but he mentioned something about training because then a dog truck came up, the dog came out. Well, after it was all over, they weren't charged with anything. The dog had slobbered all over their clothing, over their luggage and when I did get involved then the superintendent had said that if they would send a bill they'll pay for it. But that was a part of the training. I don't want dogs trained on black people. So this is not something that I favor. I don't trust law enforcement in general. That doesn't mean every individual but, in general, when they want more power and something that they can use against people, they got to do a better selling job on me than to just say that somebody might make a dog run in circles in a kennel. They ought to have better security around the kennel and maybe they ought to handle these dogs differently when they put them in these trucks and cars. But I'm not blaming you for coming here. I'm using you as a sounding board so I don't have to say this to all of them.

EDDY BURMOOD: I'd like to respond, though, if I may.

SENATOR CHAMBERS: Sure.

EDDY BURMOOD: I don't know if you saw my canine here...

SENATOR CHAMBERS: Um-hum.

EDDY BURMOOD: ...in the room. Okay. And he reacted to people...

SENATOR CHAMBERS: Good thing Nicole wasn't here. Nicole is about this big and is a little poodle (laughter). I let my...

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EDDY BURMOOD: ... (laugh) I don't know if you saw how he reacted around people but he is trained to perceive threats and act accordingly. To him, things are cut and dry. It's either this way or this way. As far as being trained to differentiate people's race, dogs are color-blind so you to him, you just have a better tan than the rest of us, sir.

SENATOR CHAMBERS: But you can give them a command, can't you?

EDDY BURMOOD: Yes, I can.

SENATOR CHAMBERS: And you can differentiate race, can't you?

EDDY BURMOOD: Yes, I can.

SENATOR CHAMBERS: So if you sic him on... Senator Foley and I are both sitting here. If you sic him on Senator Foley, will he get Foley?

EDDY BURMOOD: Yes, sir.

SENATOR CHAMBERS: If you sic him on me, will he get me?

EDDY BURMOOD: Yes, sir.

SENATOR CHAMBERS: If he's left to himself and we're both just sitting here, is he going to bother either one of us?

EDDY BURMOOD: No, sir.

SENATOR CHAMBERS: Then I wonder why invariably when we see this pictures and there was one I'm glad that they showed in the paper. They're going after black kids and black people.

EDDY BURMOOD: I don't know. I can only speak for my dog, sir.

SENATOR CHAMBERS: I know and that's why I don't want to give carte blanche in a law like this to every cop in every police station, I mean, police force in the state. And that is what it would do, wouldn't it?

EDDY BURMOOD: This bill, no.

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SENATOR CHAMBERS: What does it do?

EDDY BURMOOD: This bill only protects our dogs from the bad element out there harassing them when they're not able to...

SENATOR CHAMBERS: But what I'm saying, it applies to every dog owned by any police force and they can say, well, this says in here that they have to meet certain...

EDDY BURMOOD: No, sir, it applies to those that would be certified and their handlers have to be certified by the Police Standards Advisory Committee.

SENATOR CHAMBERS: Now who certified you?

EDDY BURMOOD: I was certified through the vendor that provided the dog and I was also certified with the United States Police Canine Association.

SENATOR CHAMBERS: So the association sent somebody here to check you out?

EDDY BURMOOD: I am the president of the Nebraska Police Canine Association.

SENATOR CHAMBERS: So you checked yourself out.

EDDY BURMOOD: No, I am not the one that certified my dog. I do not represent the United States Police Canine Association.

SENATOR CHAMBERS: So then why do you bring up the United States whatever it is?

EDDY BURMOOD: That was part...one of his certifications...one of his certifications. It's a nationally recognized certification.

SENATOR CHAMBERS: But he...and he's the one who certified you.

EDDY BURMOOD: No, he...

SENATOR CHAMBERS: Who certified you?

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EDDY BURMOOD: I was certified through Detector Dogs International.

SENATOR CHAMBERS: And they are the ones who sold you the dog.

EDDY BURMOOD: And they're the ones that initially provided the dogs to the State Patrol, U.S. Customs, and other various agencies.

SENATOR CHAMBERS: And they certified you?

EDDY BURMOOD: Yes, sir.

SENATOR CHAMBERS: It's in their interest to certify the buyer, isn't it?

EDDY BURMOOD: I see your point. However, certification, under this bill, sir, will make it standard for the state.

SENATOR CHAMBERS: And who will do the certifying under this bill?

EDDY BURMOOD: Whoever the Police Standards Advisory Committee elects for a standard.

SENATOR CHAMBERS: So if I'm a lawyer and I'm the smartest lawyer in the world and I'm dealing with a judge who's got a third grade education, I'm really no smarter than the judge, am I? Because he's only going to understand what his third grade education will let him understand. Isn't that true?

EDDY BURMOOD: No, sir, not unless you educate that man.

SENATOR CHAMBERS: I don't think I made the question clear so I'll let that go. Who certified your dog?

EDDY BURMOOD: Okay. He's been certified by the vendor and through a national organization called the United States Police Canine Association.

SENATOR CHAMBERS: So who did the Canine Association send here to certify your dog?

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EDDY BURMOOD: The United States Canine Association or the Nebraska Canine Association?

SENATOR CHAMBERS: What I'm asking you, who certified your dog?

EDDY BURMOOD: The vendor and a nationally recognized canine association is the U.S. PCA.

SENATOR CHAMBERS: Well, did that association send somebody here or you dealt with somebody who claimed to be certified by that association?

EDDY BURMOOD: No, sir. They have no interest in Nebraska law.

SENATOR CHAMBERS: Did you have contact with somebody who certified your dog?

EDDY BURMOOD: No.

SENATOR CHAMBERS: And you know the seller is going to certify the dog. Is the seller in this because he believes in law enforcement or he's trying to make money? Is he a business or a nonprofit?

EDDY BURMOOD: He's a business that is no longer doing business.

SENATOR CHAMBERS: Why?

EDDY BURMOOD: He's done it for years and I think he's retired from it.

SENATOR CHAMBERS: So now who's...

EDDY BURMOOD: So now this law will require canines that want to be protected under the law to be certified by a standard that the Nebraska committee that was appointed by statute, to set the standard for Nebraska canines.

SENATOR CHAMBERS: The Standards Advisory Council.

EDDY BURMOOD: Yes, sir.

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SENATOR CHAMBERS: But because that is not in place, I'm trying to get a fix on how certification occurs. Your dog was certified.

EDDY BURMOOD: Yes.

SENATOR CHAMBERS: Tell me what was involved in arriving at the certification of your dog. Were you visited by somebody who looked at the dog and ran the dog through its paces?

EDDY BURMOOD: No, he went under training in Germany initially and then came to the United States where he was trained in his police work. And then I was joined up with that dog for an additional five weeks to work with his abilities, learn how to read the dog, how to maintain his...

SENATOR CHAMBERS: And was the vendor the one giving this training to you and the dog?

EDDY BURMOOD: Yes, initially. We have ongoing training. Myself, I have nine hours every two weeks...

SENATOR CHAMBERS: I'm not even questioning that.

EDDY BURMOOD: Okay.

SENATOR CHAMBERS: Other than the vendor, you'd had to have some director contact with the vendor. Is that right?

EDDY BURMOOD: Initially, yes.

SENATOR CHAMBERS: And during this training that you and the dog took together, the vendor had somebody there doing the training. Is that right?

EDDY BURMOOD: That's correct.

SENATOR CHAMBERS: After the training, is that when the certification was bestowed?

EDDY BURMOOD: Yes.

SENATOR CHAMBERS: So everything as far as your certification and that of the dog was under the control of the vendor, the seller?

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EDDY BURMOOD: For that one certification, yes.

SENATOR CHAMBERS: And there was a financial interest that the vendor had in certifying you and the dog, wasn't there?

EDDY BURMOOD: Yes, sir. But this LB will get away from that.

SENATOR CHAMBERS: And what training based on what the law says...because I don't see it, will somebody have who's going to do the certifying other than saying, certified by some council? So where in here do we see the qualifications required for the person who will certify other than that,...is somebody...these standards are recognized by the Police Standards Advisory Council?

EDDY BURMOOD: Those certifications haven't been drawn up, sir. This is the beginning of what these things will help down the road...

SENATOR CHAMBERS: So we take...

EDDY BURMOOD: ...what I've brought up, there's going to be other people talking about other issues as far as protecting the dog.

SENATOR CHAMBERS: But we take on faith that the right thing is going to be done when the things that I'm concerned about are really not spelled out in the bill, are they?

EDDY BURMOOD: Well, you've taken a lot of things on faith by having the Police Standards Advisory Committee certify officers or set the standards for certification of officers.

SENATOR CHAMBERS: Well, you know, you take what you can get when it comes to two-legged people but when it comes to four-legged it's a different situation.

EDDY BURMOOD: Yeah.

SENATOR CHAMBERS: I'm not aware of cops...they've done some bad things but biting people and doing those kind of things, but that's all I will ask you and all the time I'll take with you. Thank you.

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EDDY BURMOOD: Okay.

SENATOR BOURNE: Thank you. Further questions for Officer Burmood? Senator Aguilar.

SENATOR AGUILAR: Yeah. Senator Chambers was asking a line of questioning comparing something to your dog to the State Patrol dogs. Do you not...your dog received the same type of training essentially as the State Patrol dogs?

EDDY BURMOOD: Similar, similar. And I trained with the State Patrol trainers. I have trained with other canines across the state. I've trained with other canines in other states. As far as certifications, it's a matter of either going up an A-frame compared to going up a ladder. And that's the differences and different types of certifications. They just use different tools to assess that dog's abilities.

SENATOR AGUILAR: And did I understand that you answer a question that you have other types of certification aside from the vendor certification? Is that not true?

EDDY BURMOOD: Yes, I do.

SENATOR AGUILAR: Okay. Thank you.

SENATOR BOURNE: Thank you. Further questions? Senator Friend.

SENATOR FRIEND: Just one quick one, Officer. Thanks. On page 3 of the bill on...do you have it in front of you? Oh, well, let me...

EDDY BURMOOD: Not the bill.

SENATOR FRIEND: ...I'll read it real fast. Line 17, number 7, says police animal means a) a horse owned, controlled by law enforcement agency for the purpose of assisting law enforcement officer in the performance of his or her official enforcement duties or a dog. And then it says certified and then it goes into by the Police Standards Advisory Council. This isn't in statute now so I'm not trying to follow up on anybody else's line of questioning

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but I was curious. The dogs don't have to technically be certified right now.

EDDY BURMOOD: That's correct.

SENATOR FRIEND: Okay. Maybe I'm...

EDDY BURMOOD: We're trying to improve the standards. I think we're trying to benefit the public by having dogs out there that are certified.

SENATOR FRIEND: Okay. With that in mind, when this occurs will somebody come out to all of these communities from the Police Standards Advisory Council and say, certified, boom, rubberstamp it, certify...or whatever. Or how...do we even know what the procedure would be, I guess, at this point that's not relevant or...?

EDDY BURMOOD: I can't say what the procedure will be but I am anticipating that annually these dogs will have to be tested as well as the handler to make sure that they meet the requirements that will be acceptable by this committee and by the courts.

SENATOR FRIEND: Oh, you think certification isn't just a one-time deal. It's you possibly once a year somebody's going to have to analyze each particular animal, hopefully, if they have...

EDDY BURMOOD: Yes.

SENATOR FRIEND: ...the resources and continue that certification if it was there before.

EDDY BURMOOD: And with over 50 dogs in the state of Nebraska alone not counting State Patrol. They're going to have to go somewhere for this certification and they can't all go to the two people that the State Patrol has. So the Standards Committee will have to determine what standard they want Nebraska dogs to be certified to, and we will have to go and seek someone that is certified to certify a dog.

SENATOR FRIEND: Okay. Thanks.

SENATOR BOURNE: Thank you. I have just one quick question.

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I'm sorry. We had an incident; I believe it was in Omaha where a drunken individual downtown had punched a horse so I mean, I personally believe there should be protections of police animals: dogs, horses, or whatever. You had cited a particular situation, the torsion of an intestine. I don't think the drafting would encompass that particular thing and here's... A person commits the offense of obstructing a peace officer when, by using force, violence, physical interference, he or she intentionally obstructs, impairs, or hinders a police animal assisting a police officer or peace officer acting pursuant to the officer's official authority. If that dog is sitting in a car or in a kennel and somebody teases it, I don't think that that falls under your statute.

EDDY BURMOOD: Not that particular statute. There's four statutes that involve police canines.

SENATOR BOURNE: Okay.

EDDY BURMOOD: Only two of them have the definition where it said, a dog owned and controlled by the State Patrol. Those two statutes are being amended to have this definition. But under police animal and one of the statutes is the definition of a police animal. Under harassment that then becomes applicable to harassing them in the patrol car. It's a different statute, not one of these that's attached to the bill.

SENATOR BOURNE: And that statute applies to the enforcement agencies other than...?

EDDY BURMOOD: Because it uses the wording police animal.

SENATOR BOURNE: Okay. Senator Chambers.

SENATOR CHAMBERS: You're saying in response to Senator Friend's questions what you think these standards may entail are not binding on this council at all, are they?

EDDY BURMOOD: No, sir.

SENATOR CHAMBERS: The council doesn't have to require any recertification or any retesting or can say that every dog currently owned and being used in this capacity is going to be certified. They could say that, couldn't they?

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EDDY BURMOOD: That's correct.

SENATOR CHAMBERS: And they could set a very low standard or no standard based on the way the statute is drafted. Isn't that true?

EDDY BURMOOD: That's correct but that's not in our best interests, sir.

SENATOR CHAMBERS: I don't challenge what you say is your intention or the way you'd like to see it. I'm talking about a law we're being asked to pass that covers the whole state and they can do any and everything that this law allows. There is nothing that sets even a direction that this kind of certification ought to go. It doesn't say that the standard is designed to ensure that these dogs are properly trained, the officer is properly trained, that the public interest is going to be served. None of that is in statute.

EDDY BURMOOD: But it does...

SENATOR CHAMBERS: We're being asked to let this council, whoever these people are, control and do everything they want to and then bring these dogs under the existing laws that cover State Patrol dogs. Now if I want to I can look at every dog that the State Patrol has because there are not that many. There's no way I could go to every little police department in the state of Nebraska even if they say that their dog received similar training and know how that dog is being handled once the training is over and the dog is back home in this little town. Or maybe you have a cop who doesn't like teenagers or who doesn't like people who speak a different language and will use the dog to menace those people.

EDDY BURMOOD: That's not the dog's fault, though.

SENATOR CHAMBERS: So that's why I don't want to give carte blanche in one of these statutes to make it possible for there to be an incentive for this stuff to be done because if you do this that's being asked, you pointed out in response to Senator Bourne's question that there are other statutes that relate to harassing a police animal. Now, do

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those statutes currently apply to dogs and horses other than those belonging to the State Patrol?

EDDY BURMOOD: No.

SENATOR CHAMBERS: But now if we do this it will apply, accept this definition, to every dog or horse owned and used in law enforcement by any police force in the state. Is that true?

EDDY BURMOOD: Once they meet the standards that will be set up.

SENATOR CHAMBERS: But we don't know what the standards are. If you're in a small community and you wanted to use a horse, you could go get a horse off somebody's farm.

EDDY BURMOOD: And right now...

SENATOR CHAMBERS: That was used...

EDDY BURMOOD: ...sir, there's no standard.

SENATOR CHAMBERS: But that animal...a person is not going to be charged with anything for harassing that animal. For example, you've got a horse that maybe they used to cut cattle and do other things and then you're going to put him out here in law enforcement. And he's going to come up on a person in a way that the person feels threatened and the person makes a gesture at the horse. If it's interpreted as harassment with this statute, that person could be punished. Isn't that true?

EDDY BURMOOD: I can...

SENATOR CHAMBERS: The person can't be punished for that now, can he or she?

EDDY BURMOOD: Technically, no.

SENATOR CHAMBERS: Okay. That's all I'll ask.

SENATOR BOURNE: Thank you. Further questions? Thank you, Officer.

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EDDY BURMOOD: Thank you.

SENATOR BOURNE: Next testifier in support? And we are signing in?

JENNIFER STEHLIK-LADMAN: Yes.

SENATOR BOURNE: Thank you very much.

JENNIFER STEHLIK-LADMAN: My name is Jennifer Stehlik-Ladman, S-t-e-h-l-i-k L-a-d-m-a-n. I'm the Seward chief deputy county attorney and as Senator Stuhr alluded to, last year we came to her after our canine was injured, trying to apprehend a suspect that had been attempting to steal anhydrous from one of our village's co-ops. He fled from law enforcement and then attacked our canine that was trying to track him down and she sustained some injury. And it was at that time that her handler realized that the dog that he had been using that is a certified animal through the State Patrol...it's not a State Patrol animal but our canine has been certified and is recertified through the State Patrol on an annual basis and does the same exact job as the State Patrol dogs do, is trained the same way, obtains continued training on a weekly basis; was not offered the same protection as the State Patrol's animals. And that's why we approached Senator Stuhr with this legislation. These animals when they're put in the capacity as law enforcement officers, they are presented as law enforcement officers even though they are animals; they're not people. They're placed in harm's way. They're asked to protect us. They protect the officer who is their handler and they protect the other officers in the department. And they protect all of us and I think they should be given the same protection as the State Patrol's animals because when somebody acts against these animals whether it be owned by the State Patrol, whether it be owned by a municipal police department or a county agency, it's an action against law enforcement. And I think it should be treated as such equally regardless of who owns that animal. I think a by-product of this proposed legislation is that it's going to create a standard for these animals where we don't have one now. State Patrol has their standard and then it's up to the individual agency how or if the animal is trained and certified. Under the proposed legislation then the animals would, in fact, have to undergo some sort of standardized

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certification process.

SENATOR BOURNE: Thank you. Questions? Senator Chambers.

SENATOR CHAMBERS: This incident that was mentioned which brought this bill to us has never been explained in detail. What happened?

JENNIFER STEHLIK-LADMAN: What had happened, an individual was...the co-op in Pleasant Dale, Nebraska, a little village off the interstate, realized somebody was stealing anhydrous. We had officers sit stakeout that that co-op they found...the guy came back to steal some anhydrous. He took off from those officers that had staked out the co-op. The canine unit was brought in to track this individual. He ran down through a ravine and into a thickly wooded area, and the officers lost him. The canine tracked him. He came up out of the grass and attacked our canine and he was eventually taken into custody.

SENATOR CHAMBERS: You mean saw the dog there and just ran and attacked the dog?

JENNIFER STEHLIK-LADMAN: The dog went to him and then as she got to him she stopped. She tracked him down. He was hiding; he was stationery, he was hiding. And she got to him, stopped, and then he came up and he swung at her and hit her. And so then there was a scuffle between our canine, her handler, and the suspect and then he was ultimately taken into custody. But...

SENATOR CHAMBERS: You didn't witness this, of course.

JENNIFER STEHLIK-LADMAN: No.

SENATOR CHAMBERS: The only thing you went by was the police report.

JENNIFER STEHLIK-LADMAN: That's correct.

SENATOR CHAMBERS: And just like police say that a person attacked the cop and that's why the cop beat his brains out and they accept what the cop said. I'm not willing to accept. What kind of dog was this, a miniature poodle or a standard poodle? Standard poodles are big.

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JENNIFER STEHLIK-LADMAN: They are big, sir.

SENATOR CHAMBERS: Was this...so what kind of dog was this?

JENNIFER STEHLIK-LADMAN: She is a German shepherd.

SENATOR CHAMBERS: So a person is going to see a German shepherd and just attack the German shepherd.

JENNIFER STEHLIK-LADMAN: Somebody who's under the influence of a controlled substance certainly might not use the best judgment and become aggressive and attack an animal. That's been known to happen.

SENATOR CHAMBERS: What injuries were inflicted on this person?

JENNIFER STEHLIK-LADMAN: On the person?

SENATOR CHAMBERS: Yes.

JENNIFER STEHLIK-LADMAN: He was bitten by the dog.

SENATOR CHAMBERS: How many times?

JENNIFER STEHLIK-LADMAN: I don't remember. I know he was bitten once. It wasn't more than one or two times.

SENATOR CHAMBERS: Well, are they trained to take hold and not let go or are they trained to bite? If you don't know, I'll wait till somebody else comes.

JENNIFER STEHLIK-LADMAN: I can't speak for all of the canines. Actually, I'm not going to answer that question. I don't want to even speak for our canine.

SENATOR CHAMBERS: Did the person suffer any injuries as a result of being struck by the police officers?

JENNIFER STEHLIK-LADMAN: I don't believe so.

SENATOR CHAMBERS: But you're not sure.

JENNIFER STEHLIK-LADMAN: I don't remember, I'm sorry.

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SENATOR CHAMBERS: Okay. I won't pursue that. How long ago did this happen?

JENNIFER STEHLIK-LADMAN: This happened in June of 2003.

SENATOR CHAMBERS: And this is January of 2005.

JENNIFER STEHLIK-LADMAN: We offered...it was LB 823 last year so it came up last January and then it didn't make it out of committee last year.

SENATOR CHAMBERS: You said it (laugh). That's all I have and I don't want you to feel badgered but I wanted some details on the incident that caused the bill. Well, let me ask you this. Have there been any subsequent incidents in your county?

JENNIFER STEHLIK-LADMAN: Of?

SENATOR CHAMBERS: Of a person attacking a German shepherd.

JENNIFER STEHLIK-LADMAN: Any German shepherd or our canine unit?

SENATOR CHAMBERS: The police German shepherd.

JENNIFER STEHLIK-LADMAN: I don't believe so. I know our canine has tracked other people. I don't know if they've committed any acts of aggression...

SENATOR CHAMBERS: Was this man found to be under the influence of meth?

JENNIFER STEHLIK-LADMAN: He was found in possession of meth and I...

SENATOR CHAMBERS: No, under the influence?

JENNIFER STEHLIK-LADMAN: ...I don't know if he was under the influence. I don't think they were tested...

SENATOR CHAMBERS: Probably not if he had sense enough to run and elude all the cops. So I don't think it's a fair representation to say that this person or to leave the

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impression, was under the influence of meth and that led him to attack a German police dog who has him at bay.

JENNIFER STEHLIK-LADMAN: I'm certainly not saying he was. Your question was, why would somebody attack a German shepherd. And I'm offering that possibility.

SENATOR CHAMBERS: Okay, well, I wasn't clear. I meant in this case, why would this person be likely to do it?

JENNIFER STEHLIK-LADMAN: He was not...to my knowledge, he was not tested to determine whether or not he was under the influence at the time.

SENATOR CHAMBERS: Okay. That's all I have. Thank you.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

JENNIFER STEHLIK-LADMAN: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in support? Welcome to the committee.

MATTHEW LIPPOLD: Thank you. My name is Matthew C. Lippold, L-i-p-p-o-l-d. I'm a sergeant of the Omaha Police canine squad. And I'm here to testify in support of the bill. Since 1997, our dogs have certified to the exact same standard as the Nebraska State Patrol. I have been certified as a state evaluator for police service dogs and am currently going through the judge program for police service dogs. This is all done under Lieutenant and now Captain Michael Kirby. We've held that standard since 1997 and I have certified dogs for other agencies to the exact same standard that the Nebraska State Patrol has. I know that because I went through a ten-week course where I became a state evaluator and I got to see numerous dogs that the Nebraska State Patrol produced and I've taken written examinations as well as verbal examinations as well as having to produce dogs that were examined by the Nebraska State Patrol. The additional protection that the dogs are offered would be a benefit to the citizens of Omaha, would be a benefit to our dogs and would be a benefit to us as handlers. And I'll be happy to answer any questions.

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SENATOR BOURNE: Thank you. Questions? Senator Friend.

SENATOR FRIEND: Yeah, hi Sergeant Lippold. I just wanted to...is there a way or is there any...there's probably no way to be certain, but let's use a hypothetical. If we're out in Sheridan County and let's say this bill passed and we're out in Sheridan County. And we want to try to figure out the certified dogs in Omaha, the certified dogs with the State Patrol. Obviously, we would be looking for a consistent standard here so that dog in Sheridan County is going to receive that same type of certification. How can a committee like this be certain that that certification is going to be consistent with what that...that what we already have out there, the proper certification, I guess?

MATTHEW LIPPOLD: Correct. What the Nebraska State Patrol offers is three different certification standards from the easier standard to the more difficult standard. All of our dogs have always been certified to the most difficult standard but it's cut and dried. Your dog will either make one of the three standards and it's all on paper. You look down, you get...anyone can see the standards. You get time to train your dog and when you're ready for the presentation, you do that. All of our dogs are certified by someone other than myself because I don't want any hint of improper certification. But it's always certified by someone who is a state recognized evaluator...

SENATOR FRIEND: Oh, sorry. And that would be...but I guess the assurance of what you're telling me is the Police Standards Advisory Council...are you saying...there is nothing in this bill that says that will be the standard what you just told me it would be.

MATTHEW LIPPOLD: I can tell you...

SENATOR FRIEND: I guess that's where I'm not trying to follow anybody...again, in anybody else's line of questioning. But that's what, I guess, I would want to know that that would be the standard I suppose.

MATTHEW LIPPOLD: If you want to certify them to the level of the Nebraska State Patrol, that is already the standards, one of those three. It's from the most difficult which is a German...DPO is the easiest,...

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SENATOR FRIEND: All right, all right. I see. Thanks.

MATTHEW LIPPOLD: And there's three standards in place. Many dogs cannot reach the most difficult standard in the first year; some can. But if you want to get certified at the Nebraska State Patrol level, you'll go to one of those three standards.

SENATOR FRIEND: Okay. Thanks.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: Yeah. I'm going to see if I understand this correctly because I've attended some seminars and things where they give demonstrations on police dogs and some of the work they do. But is it not true that when the dog is on a search mission to find someone that when they do locate that person they are trained to more or less...to sit and hold that person at bay unless that person either tries to flee, harm the handler, or harm the dog himself?

MATTHEW LIPPOLD: That's correct under every single one of the three standards set by the Nebraska State Patrol.

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Thank you. Further questions? Senator Chambers.

SENATOR CHAMBERS: Sergeant, with all due respect, isn't every member of the Omaha Police Department trained to use lethal force only when his or her life is in danger or that of another person?

MATTHEW LIPPOLD: That's correct, sir.

SENATOR CHAMBERS: So regardless of what is stated as a standard or the training they put these people through, that is no assurance that that standard is going to be observed by the human member of the team, is there?

MATTHEW LIPPOLD: No, sir.

SENATOR CHAMBERS: So even if the dog is sitting there

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holding Senator Aguilar at bay, that is not to say that the human will not come up and set the dog on him.

MATTHEW LIPPOLD: That's correct, sir.

SENATOR CHAMBERS: Okay. That's the point I'm trying to make, not saying you all don't know how to train dogs or that if properly trained the dog is not going to do as it was trained. I'm saying that we still have a human factor in this, and I'm not as trusting as my colleagues are. But now I am following up on Senator Friend's question. Nothing in this bill says that the State Patrol standard will be that which is going to be adopted by this advisory council, is there?

MATTHEW LIPPOLD: No, sir.

SENATOR CHAMBERS: What the council could say is that if it's a State Patrol dog or a dog working in a large metropolitan area and they might set population or something like that. This is a standard that must be reached. But if it's in a small or rural community, then a different standard could be reached. The council could do that if it chose, couldn't it, under this bill?

MATTHEW LIPPOLD: It can do what it wishes.

SENATOR CHAMBERS: That's all I will ask you because I don't want to put you into the bill drafting business. Thank you.

MATTHEW LIPPOLD: Thank you, sir.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you for your testimony. Next testifier in support?

DALEN WOOD: My name is Dalen Wood, W-o-o-d. Good afternoon, ladies and gentlemen. It's truly humbling to be here in your presence. My name is Dalen Wood. I'm a deputy sheriff at the Howard County Sheriff's office, St. Paul, Nebraska. I also proudly serve as the second chair vice president in the Nebraska Police Canine Association and I am a police service dog handler myself. Here today with other police dog service handlers and to speak with your about LB 110 (sic). My first bill, I should explain to you, why

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LB 110 (sic) is crucial to law enforcement. Educated police service dog handlers are a very unique group of people that deal with ever changing business that is law enforcement. They also equip themselves with a time and changed knowledge of man's best friend which is the dog. A police service dog does not ask for anything except the care and compassion of a handler. They work tirelessly upon a single command. The police service dog gives all of themselves to the law enforcement community that they serve. LB 110...LB 100, excuse me, would give our canine companions equal protection which they've earned and they deserve. The police service dog is a very well educated, man-trained tool to assist the law enforcement society in a number of complex tasks from searching for narcotics to protecting this building from terrorists in a time when violent crime and narcotics abuse are an ever growing incline. LB 100 protects canine partners from being subjected to the same violence that many officers are subjected to every year. When an officer is attacked in the line of duty in a seemingly unspeakable act but when a dog is subject to a brutal, sometimes fatal attack by the hand of a human being it becomes an attack which is unmentionable and appalling. LB 100 would continue the respectful relationship between law enforcement and the communities in which they serve by assisting in the protection of our canine allies. You as senators have the opportunity to help us protect our canine friends and partners. A vote in favor of LB 100 would show the citizens of Nebraska that you stand behind your jurisdictions of law enforcement communities and are willing to help them protect their personnel including their canine. I'll answer any questions that I can.

SENATOR BOURNE: Thank you, Officer Wood. Are there questions? Senator Chambers.

SENATOR CHAMBERS: I just have one. You are not able to sit here and tell us that all of the dogs being used by law enforcement agencies in this state have the training and the competency that you just expressed as being the model. You can't tell us that that's the case in reality, can you?

DALEN WOOD: No, we wish they would.

SENATOR CHAMBERS: Okay.

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SENATOR BOURNE: Thank you. Further questions? Thank you for your testimony, appreciate it.

DALEN WOOD: Thank you.

SENATOR BOURNE: Other testimony in support?

JEFF TREU: Hello there. My name is Deputy Jeff Treu, T-r-e-u and I'm a deputy with the Antelope County Sheriff's Department. I don't want to repeat a lot of things that have been said. Senator Chambers had a couple of questions I wanted to touch on. My dog is just tracking and drug certified. He doesn't know how to bite somebody. You could take him home with you and he wouldn't bother you. When he tracks somebody which we just tracked a seven-year-old kid that got lost here a couple of months ago, we tracked this kid almost two miles and when he got there, the dog laid down. That kid could have pounced on the dog and wouldn't have been bitten. I won't argue that a person that maybe isn't up to the standards that we want as far as a law enforcement officer couldn't send a dog in. I could walk across the street here when I leave today and be hit by somebody. It could be you that hits me. I guess, you know, I'll put it back in your court as far as sure, a person could have...anybody can attack somebody. But the officers I work with, you have a certain standard of level you have to be at to be a law enforcement officer. You're not going to send this dog out to cause pain on somebody. I couldn't do it with my dog anyways. I could tell my dog to bite you or you and he isn't even going to know what I'm telling him because he's never been trained to do that. He's trained to search for drugs. I traveled to a state, western Nebraska last year and spoke at 27 different schools. We put on a program for schools and that question always came up. What if we hit your dog? Well, nothing has happened to you unless it's a State Patrol dog. I believe my dog was trained to a higher standard, not taking anything away from the State Patrol but three of the other officers here with me today, our dogs were trained by the individual that trained the State Patrol trainer. So we're all kind of on the same page when we train a dog here. They're all trained to a certain standard and whether you get your dog trained in South Carolina, Iowa, Kansas, Colorado, or here in Nebraska there are certain standards they have to meet. They just have to meet certain standards in order to be

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police dogs. I have to go back to South Carolina here next month because my year is up on my new dog. I lost my old dog to cancer a year ago so I went and got a new dog. If he does not pass the certification down there, if he's not able to find dope or alert to dope when there's drugs there, he alerts where there's no drugs, he's not certified. And I'm done with that dog until we can bring him up to those standards. I guess that's all I have. If you have some questions.

SENATOR BOURNE: Thank you. Questions for Deputy Treu?
Senator Chambers.

SENATOR CHAMBERS: Just one, Deputy Treu. I'm not going to make a play on his name so don't give me that look (laughter). I will accept at face value what you say about the high level to which your dog is trained. And I respect people who respect animals, I really do. But we're not talking about how we feel about animals because as you said, the dog that you're using now, if he doesn't perform as he should, your affection for him which may exist is not going to make you say, well, I'll just overlook that and I'm going to take him and use him in this work even though he's not trained to the proper level. So you have to look at him differently from the way you'd look at him if he were just your pet. So it's one thing for you to tell me the high level of training your dog has which I accept at face value, looking at the way this bill is written we have no standard of any kind. We don't even have a standard for this council that is going to do the certifying. And I'm not willing to trust anybody when it comes to a subject that we're talking about and just pass a statute that gives carte blanche to this advisory council to set standards for no standards. If they don't set any standard at all, they're not in violation of this statute as it's written, are they?

JEFF TREU: There's still standards set every year, Senator Chambers. I still have to pass a test every year. Everyone whose dog was trained by the State Patrol has to have their dog recertified every year.

SENATOR CHAMBERS: But here's the point that I'm making. This statute is designed to reach out and give a protection to dogs that don't belong to or are controlled by the State Patrol. The State Patrol, in a way, can be put out of this

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discussion for my purposes. What this bill is going to say is that the Police Standards Advisory Council is the one that's going to determine standards and the standards will be those that are recognized by the Police Standards Advisory Council. There is nothing in this bill that says the standards must reach the level maintained by the State Patrol or by Deputy Treu or by anybody else. They have carte blanche to do what they want to do. They can lower the standard from what you have to meet now if they choose to.

JEFF TREU: They can't lower the standard. As the...

SENATOR CHAMBERS: Well, yes, they can under this.

JEFF TREU: ...as the officer from Omaha explained, there's the three standards. They have to meet one of those standards or they're not a usable dog. We have to take them out of service.

SENATOR CHAMBERS: They don't have to meet it under this statute until the standards are going to be what this advisory council says the standards are. That's how state law works.

JEFF TREU: I understand that. They have to adopt those standards which there is no other standards.

SENATOR CHAMBERS: Well, actually, whatever...right. Whatever standards this advisory council says are the minimum. They can go beyond that if they want to but they don't have to. So let's say a person such as yourself is going to want to meet that high a standard. Let's say the State Patrol and let's say the sergeant from Omaha but you get to other places...

JEFF TREU: There is no...

SENATOR CHAMBERS: ...or maybe they don't have the money and giving consideration to those factors because this advisory council is going to be appointed by somebody and there will be political considerations.

JEFF TREU: There is no lower standards than the DPO standards. There's no other lower standards they can go

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to...

SENATOR CHAMBERS: Under this they can.

JEFF TREU: ...and you simply, when you talk about cost, Captain...

SENATOR CHAMBERS: Under this they can.

JEFF TREU: ...I'm just telling you...

SENATOR CHAMBERS: If they set a lower standard then any police agency that has a dog that meets that lower standard is given the protection of the state law. That's what the minimum standard will be. You can go above it but you don't have to and maybe this council will do the right thing but I'm not trusting enough to pass this bill as it's written.

SENATOR BOURNE: Thank you. Further questions? Senator Aguilar.

SENATOR AGUILAR: Yeah, Officer...Deputy, excuse me. Do you know the makeup of the Police Standard Advisory Council? What does that consist of?

JEFF TREU: It's currently the same people...some of them were here earlier today, talking about the decertification type law.

SENATOR AGUILAR: Is there a possibility we could get Senator Chambers on that council (laughter)?

JEFF TREU: Sure. I don't...(laugh)

SENATOR CHAMBERS: I'd set that standard so high the only one that could meet it would be a border collie and a poodle (laughter).

SENATOR BOURNE: Thank you, Deputy True (laugh). Appreciate your testimony. Next testifier in support. If there is any opposition testimony or I should say, anyone else wishing to testify on the bill, come forward.

LARRY THOREN: (Exhibit 15) Larry Thoren, T-h-o-r-e-n. I'm Police Chief, city of Hastings, testifying on behalf of

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PCAN. What we're doing is asking you to enact legislation that makes certain crimes that could occur against an animal operated by a city or a county. And I reminisce with Senator Chambers of the abuses of police animals in the sixties and seventies. And quite frankly, many police departments shied away from police dogs until the reputation and the uses of the dogs changed. And that was not the dogs' fault; it was the abuses by the handlers of the dogs. And when we decided as a department to get a dog, Officer Burmood was selected to be a canine handler. And the first dog that he had was rejected because it didn't meet standards. And the vendor did train him but it was our option when that dog did not meet standards was to cease business with that individual or to operate with another dog so there is concern in standards within that. Right now there is no standard in Nebraska for police dogs. The standard that I looked at as a police chief, lacking state standards is liability and what is my exposed liability plus what is my credibility of the animal to be able to get searches admitted into court based on that. There are standards set by state and national associations. The makeup of the Police Advisory Committee, the chiefs have two positions on that board, one for first-class cities and one for second-class cities and that's Chief Mizner out of Norfolk and Chief Headley out of Aurora. And what we like about this is it creates a benchmark standard, minimum standard in the state that doesn't exist now that dogs will have to meet. Now many of us, the same as police officers have a minimum standard and it doesn't matter if you're from Sheridan County or Omaha, there is a minimum standard to be certified. What questions can I answer?

SENATOR BOURNE: Thank you. Questions for Chief Thoren? Seeing none, thank you. Next testifier in support?

JIM PESCHONG: Mr. Chairman, members of the Judiciary Committee, my name is Jim Peschong, P-e-s-c-h-o-n-g. I'm an assistant chief with the Lincoln Police Department. I'm here to testify in behalf of the Police Officers Association of Nebraska. We support LB 100. The bill acknowledges all certified police canines and provides for penalties for interfering with them in doing their job. Thank you and if you have any questions, I'd be willing to answer any questions.

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SENATOR BOURNE: Questions for Officer Peschong? Seeing none, thank you. Appreciate your testimony.

JIM PESCHONG: Thank you.

SENATOR BOURNE: Further testifiers in support? This is about the tenth testifier in support. I don't see any opposition (laughter) except for Senator Chambers (laughter).

SENATOR CHAMBERS: And I'm not going to testify even for.

SENATOR BOURNE: Thank you. Welcome to the committee.

PATRICK CAVANAUGH: Hi, it's Patrick Cavanaugh, attorney for the Fraternal Order of Police representing 2,500 law enforcement officers from across the state of Nebraska. Cavanaugh is C-a-v-a-n-a-u-g-h. And we just wanted to thank Senator Stuhr for introducing this bill and voice our support.

SENATOR BOURNE: Thank you. Questions for Mr. Cavanaugh? See none, thank you.

PATRICK CAVANAUGH: Thank you.

SENATOR BOURNE: Nice seeing you here today. Any other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Stuhr to close.

SENATOR STUHR: Thank you, Senator Bourne and members of the committee. I just want to say that the focus of this bill was to protect dogs, police dogs owned by city and county law enforcement rather than only just the State Patrol, was also to add some protection to them. I would be happy to work with the committee if they feel that additional standards are needed to be included in the bill. The language in the bill was recommended by the State Patrol because they felt that it was adequate and that they do not have the capacity to actually certify all dogs. It is our understanding that this Police Standards Advisory Council actually sets the standard for those dogs owned and controlled by the State Patrol. But if you would like those included, many times those kinds of things are included in rules and regs. And if you want more detail, we would be

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happy to work with you.

SENATOR BOURNE: Sure, great. Thank you. Questions for Senator Stuhr? Seeing none, thank you. That will conclude the hearing on LB 100.

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SENATOR CHAMBERS: Senator Bourne.

SENATOR BOURNE: Thank you. Good afternoon, Senator Chambers, members of the committee. My name is Pat Bourne. I represent the 8th Legislative District in Omaha, here today to introduce LB 112. I will try to be brief as this is the third time this measure has been heard before this committee. Simply put, LB 112 would require custodial interrogations to be electronically recorded. As I stated, this concept has been introduced before and has, in fact, been advanced from this committee. Unfortunately, there was last minute opposition when the bill was on the floor and I agreed to pull it in order to address those concerns. LB 112 has addressed those concerns that were articulated at that time and it is as a result of that cooperative effort. Under the bill, custodial interrogations at a place of detention which is defined in the bill are to be recorded either by audio recorder or a video recorder. Failure to record an interrogation would render any admission or statement made by a suspect inadmissible in criminal proceedings. However, there is a provision in the bill that if a prosecutor proves there is a reasonable excuse which is defined as well for not recording a statement, that statement can be admitted in court. A reasonable excuse is defined which includes circumstances in which it was not practicable to record at the time of the interrogation. Recording equipment could not be reasonably obtained. The suspect refused to be recorded or when the recording equipment malfunctions. The bill also provides that if a person testifies contrary to any unrecorded admission or statement, that statement can be used for the purpose of impeachment. In addition, a ruling to suppress a statement does not prevent the use of any evidence derived from the suppressed statement if that evidence is otherwise admissible. Statements obtained in another state in compliance with the laws of that state or statements

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obtained by federal law enforcement officers are admissible under this measure. I personally feel this is good policy. Unless there is illegal activity taking place during interrogations, I don't understand why there would be a reason for anyone including law enforcement to oppose the concept. Electronic recording not only protects the rights of an accused, it also protects law enforcement from false accusations. In my opinion, it protects the integrity of our criminal justice system. Other states have recognized the value of recording interrogations and many are considering adopting this policy. Illinois was the first state to require recorded interrogations and that state sheriffs association called it a "a good tool" and that "its time has come." I believe its time has come in Nebraska as well and I believe that it is time to finally pass this measure. Thank you.

SENATOR CHAMBERS: And before you leave, how many are going to testify in favor of this bill? Three. How many are going to testify in opposition? Six. Just so you know.

SENATOR BOURNE: Thank you.

SENATOR CHAMBERS: Any questions by any member of the committee? Thank you, Senator Bourne.

JIM MOWBRAY: Senator Bourne, Mr. Chairman and members of the committee, my name is Jim Mowbray. It's M-o-w-b-r-a-y. I'm chief counsel for the Nebraska Commission on Public Advocacy and I'm here testifying in support of LB 112. I've been here before testifying on a bill similar to this but I do think that LB 112 meets at least almost all of the criticism and opposition that we've heard over the last several years regarding law enforcement's problems with videotaping and audiotaping statements as well as some of the other concerns that have been echoed by the County Attorneys Association. This issue has been studied across the United States and there is a large movement that is coming from a number of different variety of organizations that support this concept. For example, in February which you're getting a handout of 2004, the American Bar Association passed a resolution resolving that they urge legislatures and courts to do such type of legislation and that's require videotaping. I'm also handing out a study that was done by the Department of Justice back in 1993 when

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the issue started becoming more and more at least discussed among law enforcement, whether it was a good or a bad idea. And in that particular study, when they started talking to the law enforcement officers that were actually using this process of videotaping they found 47 percent said that that helped a lot in the quality of the police interrogations. They also said, when they asked about defense claims on improper that the allegations decreased 43 percent. So this legislation isn't an effort by defense attorneys or defendants to somehow make it easier for them to get off as people think that that's what this does. This helps everybody. It provides a verbatim transcript of or recording of what was actually said between the police officer and the defendant because we know confessions are probably the most damning evidence against an accused if there is a confession. In looking at the DNA cases where people were exonerated meaning that they were absolutely innocent, 37 of them were homicide cases and two-thirds of that 37 that were exonerated meaning they were innocent, the people confessed. If that had been recorded, that can be analyzed by experts in the field to determine whether it is a false confession or not. What we're trying to provide factfinders is an accurate, letting them listen to and hopefully watch the demeanor of the police officer, the demeanor of the defendant. They have to determine whether these statements are voluntary. Judges complain all the time when they are presented with these motions to suppress. In the last article I handed out by Thomas Sullivan who was a coach here of the Ryan Commission, a former U.S. attorney, he also studied this across the United States and found that it saves money. Sure, there are extra costs in (inaudible) and equipment and maybe in transcribing but the long run is it saves tens of thousands of hours of hearings that aren't necessary. It increases guilty pleas. All of these statistics are cited in Mr. Sullivan's article that by him canvassing and literally talking to hundreds of police departments that have been using videotape and audiotape and it was that type of information that caused Illinois to pass the first statute. Alaska and Minnesota have required it by court rule for a number of years. (See also Exhibits 16, 17, 18, 19, 20)

SENATOR BOURNE: Okay. Thank you.

SENATOR CHAMBERS: Are you going to take...are there any

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questions from the committee? Senator Bourne.

SENATOR BOURNE: I have a question. Thank you. Mr. Mowbray, you've given us this Sullivan report. I've not seen it yet but you also mentioned that well, to go back just a little bit. I think in the past there's been opposition from the police departments who see this as some sort of an attack or a slight or a slam against them and I absolutely do not intend that to happen. That's not the intent here. But having said that, you mention in this report there's a number of interviews with police officers. Can you tell me what some of those officers who have done the recording, what their experiences have been with this, both the good and the bad?

JIM MOWBRAY: Sure. And one of the things he talks about is benefits of recording and so, again, he contacted different prosecutors and police officers. Let me just give you a few examples. In San Diego it was quoted, "Recording is a great investigative device which eliminates the problem of suspects changing their stories when we get to court. I've never met a detective who didn't like it." In Bozeman, Montana, "Recording permits the viewer to see how the suspect looked and acted before cleaned up for court." One video showed a suspect giggling when he described beating children. Our experience is a hundred percent positive." In Oregon, "If a picture is worth a thousand words, it's been my experience that a video is worth 10,000." And as far as reducing the number of defense motions to suppress statements and confessions. In Brown County in South Dakota, "Many cases now go to trial and many complaints about officers' conduct are dropped after the recordings are seen by the defense. It's good to have everything recorded so there's no question in court about what took place." In El Dorado County in California, "A motion to suppress is a swearing match between the suspect's words and the officer's words. Now we play the tape and the judge says, 'It's right there. Motion denied.' " Here was something interesting for the International Association of Chiefs of Police when asked about this. The quote is, "When asked about the effectiveness of the CCTV closed circuit television, the overall response from more than 200 law enforcement agencies indicates that there has been a marked improvement in police operations: fewer frivolous lawsuits because defendants are unable to contradict taped evidence, protection against

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claims of abuse or coercion during interrogation procedures and reduced court time for officers because defendants are unwilling to dispute charges when faced with taped evidence. Another advantage that he noted in here when he talked to these police officers about recording versus note taking. Omaha, Nebraska Police Department was quoted as saying, "It works out great due to the fact you don't have to write anything down which can make the suspect nervous and clam up...they clam up more when you write a lot of notes during the interview." In Corpus Christi, Texas, "Officers have found that they especially like the recording process because it's much faster and easier for them to simply record a suspect's interview, rather than the old method of interviewing the suspect, writing his version of events, having it typed up and having the typing signed by the suspect. Simply recording everything means when the interview is over, the suspect's confession is recorded for posterity without all the other paperwork." Prosecutors again asked the same question regarding the increased number in guilty pleas. San Diego prosecutors said, "Consider the immeasurable value of giving the eventual jury the opportunity to hear, if not see, the defendant before he has thought to temper his attitude, clean up his language, and otherwise soften his commonly offensive physical appearance, and you begin to appreciate the tremendous value of a taped interview. Not even Richard Greer (sic) as a defense lawyer in the motion picture Chicago will be able to tapdance his way around the truth that an audio or video recording so obviously displays." Hennepin County, Minnesota State Attorney, and I've said, they've had that for I think since 1994, "For police, a video interrogation protects against unwarranted claims that a suspect's confession was coerced or his constitutional rights violated. For prosecutors, it provides irrefutable evidence that we can use with a jury in the courtroom. For suspects, it ensures that their rights are protected in the interrogation process."

SENATOR BOURNE: Thank you. Were there any negatives, I mean, and I assume this was an unbiased report. Were there negative comments...?

JIM MOWBRAY: This was an unbiased report and, again, I reiterate, Mr. Sullivan is an attorney but he was a U.S. attorney. He was the Republican half of the cochair of the Ryan Commission. There were some negative reaction...he

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was concerned about, he had heard reports of negative reactions of recording. And so he talked to detectives who had originally been against it and then after having been trained, what they felt. Down in Florida, "Detectives were trained and began recordings in May 2003." A supervisor: "We are recording all interrogations and interview and are continuing to have great success. Our detectives have made the transition very well and are satisfied with the results. They have found their confession rates have not been compromised." "A 17-year detective in this office said: 'Initially I was very apprehensive but after observing and being involved in interrogations I see how the use of video is much better than the old fashioned method...it has fostered new techniques. At the beginning it was somewhat intimidating, but once you become accustomed to the procedure it becomes second nature.' " Again, in Minnesota, "When the Supreme Court decided the Scales case in 1994 which is requiring these recordings, detectives thought the world would fall apart but it has worked out very well. Minnetonka County has lived with audiotapes for over ten years. They have enhanced our cases." So those will give you examples of what is contained in there of what the benefits are to everybody in the criminal justice system from the defendant to law enforcement to the judges and ultimately the juries who have to listen to these and try to determine whether or not...how much weight to give this confession, whether this confession was done lawfully. It protects everybody's constitutional rights and it should be made law here as it is becoming...I believe two other states have passed it, Rhode Island and Maine, possibly. And so this is something that's coming and needs to come to Nebraska.

SENATOR BOURNE: Thank you.

SENATOR CHAMBERS: Oh, any other questions? Thank you, Mr. Mowbray.

JIM MOWBRAY: Thank you.

ARTHUR LANGVARDT: Mr. Chairman, members of the committee, my name is Arthur Langvardt. That's L-a-n-g-v-a-r-d-t. I'm an attorney in Hastings. I am presently the president of the Nebraska Criminal Defense Attorneys Association and I'm here to speak on behalf of LB 112. And I think Senator

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Bourne's and Mr. Mowbray's comments have covered just most of what you could say. And I would reiterate...I don't know how you'd legitimately object to this. The limitations, definitions of what's...or what's the definition of a place of detention, the way this is limited. It's narrowed down to those situations where there's plenty of time to plan for it. They know the person's coming; they know where he's going to be and they know they're going to have an interview. And this legislation excludes those more ambiguous situations where you debate. Well, is this a custodial situation or is it not when you're out on the street in a police car? It's not affected here. These are the situations where they could prepare. As I said, I don't know why anyone could really legitimately object to this. Surely no one would quarrel with the proposition that judicial proceedings and even criminal proceedings are designed to, as much as possible, determine what exactly is the truth? What actually happened? What was actually said? My own experience would lead me to believe that such a law as this if adopted by the Legislature would probably favor prosecutors and police more than defendants. There will be a few cases where it's different. It will even favor defense attorneys because when you're a defense attorney and the police...there's a report. So and so confessed to this and your client says, no, you've got to push it. It's going to eliminate a lot of proceedings and a lot of lingering doubts even say when judges accept the police version. There's that lingering doubt when they've heard the other testimony. I hope no one is going to come up and say that the Legislature shouldn't take a limited step such as this for the reason that passing such a law is impugning the integrity of the police officers. I would take the view more that if the Legislature were to adopt this law it's giving a vote of confidence to law enforcement. You've giving the opportunity to eliminate lingering questions or doubts if there are any. So I would urge passage of this bill.

SENATOR CHAMBERS: Any questions? Thank you very much.

ARTHUR LANGVARDT: Thank you very much.

SENATOR CHAMBERS: Next.

PATRICK CAVANAUGH: My name is Patrick Cavanaugh. I'm an

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attorney for the Nebraska Fraternal Order of Police. Cavanaugh is C-a-v-a-n-a-u-g-h. We represent over 2,500 law enforcement officers across the state of Nebraska and we're here to thank you for considering this legislation and show our support for LB 112. The Nebraska Fraternal Order of Police desires to secure the truth in any investigation and we support the electronic recording in normal police situations, to lend themselves to obtaining quality recordings in conjunction with the practicalities of law enforcement. And we want to support the bill and recognize the safeguards provided for normal police investigation provided in this bill. Thank you.

SENATOR CHAMBERS: Just one question. Mr. Cavanaugh, among that 2,500 plus membership, probably all of them at some time or other has been engaged...have been engaged in interrogations of the kind this bill will deal with, is that correct?

PATRICK CAVANAUGH: Majority of our membership are police officers that are involved in investigations. There are other members of our...

SENATOR CHAMBERS: And they did send you here to testify in favor of this bill?

PATRICK CAVANAUGH: In favor of this bill...

SENATOR CHAMBERS: I just wanted to be sure. Okay.

PATRICK CAVANAUGH: (laugh) I feel like I'm testifying in favor of everything here today. But this was decided that it was something with the safeguards provided for normal situations in law enforcement that this will be an appropriate bill to support and we provide our support for LB 112.

SENATOR CHAMBERS: Any other questions? Thank you, Mr. Cavanaugh.

PATRICK CAVANAUGH: Thank you.

SENATOR CHAMBERS: And we're going to the...nobody else in favor of the bill? We're now going to the opposition.

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TOM CASADY: Good afternoon, Senators. I'm Tom Casady, C-a-s-a-d-y. I'm the police chief here in Lincoln. I'm testifying on behalf of the city of Lincoln. We oppose the bill. Our opposition is based on the fact that we don't have the money to implement its requirements and we don't expect that the Legislature will provide it to us. Last year my department arrested just over 25,000 people for various kinds of misdemeanors and felonies. These ranged from things like urinating in public and disturbing the peace to rape, robbery, and homicide. About 30 percent of those people that we arrested were lodged in jail but there were probably thousands of others interviewed at police substations and our headquarters building and hospitals and places like the Cornhusker Place Detox Center and similar facilities, people that were subsequently released after their interview and after they received a misdemeanor citation. If this bill were to pass, we'd be required to record all of those interviews. It isn't really clear...I'm a little bit concerned that we might even be required to record interviews that are made in buildings that are temporarily under our law enforcement control. Regardless, it is clear to me that the sheer volume of recordings that will be mandated by this bill would be quite large in our case. You know, each of these recordings means you have to have a recorder and you have to tag in and process and make a bar code and do the paperwork and the computer entry on the tape for the digital file. We have to handle its storage and its cataloging and, most importantly, you have to transcribe it. And that's where my real concern about this bill and the real source of our opposition comes from. It's from that transcription process. Transcribing tapes is a difficult business. It's detailed and tedious work and these defense attorneys know it. They do it all the time. When you have to transcribe a tape from a deposition or a trial or a hearing, that's a time-consuming process. A 30-minute interview can take well over an hour to transcribe; some of them several hours. We know this real well because we transcribe thousands of tapes of interviews with victims and witnesses and suspects every single year. In fact, that's why we know how much it costs because we do it so much. We transcribe tens of thousands of pages every year and this is going to increase that. My best estimate, it's going to double it. I think that it will cost us more than \$100,000 a year in our case as the Lincoln Police Department. The Sullivan report, page A8 lists the Lincoln

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Police Department as having recorded all custodial interviews for the past 28 years. That's categorically untrue. I've been there for 31 years. I can assure you that that's not the case. Also, the Illinois statute pertains only to homicide, certain kinds of homicides. It doesn't apply to every single arrest that we make. And I think there are some ways to improve this kind of legislation. I am not opposed to the concept of recording interviews at all. In fact, we do a great deal of that but as it's written it would impose a really unworkable burden on us with no funding to follow it.

SENATOR CHAMBERS: And Chief, I hate to tell you, but as is the case when you're driving on the street and the red light comes on, even an officer has to stop (laughter). Are there any questions of the Chief? Senator Bourne.

SENATOR BOURNE: Chief, how many of the people that you do custodial interrogations on now do you record whether it be a video or audio?

TOM CASADY: I think it's a very, very small percentage. As I said, we made 25,057 arrests last year.

SENATOR BOURNE: And how many of those are, you know, the custodial interrogation versus an interview?

TOM CASADY: Well, over 7,000 of those people went to jail so those are clearly custodial interrogations. But that doesn't count the people that were released after they were taken to headquarters or to a substation or the detox center or the hospital. So it's well in excess of 7,000 people.

SENATOR BOURNE: I appreciate your concerns and I truly mean that. And you had some concerns, I think it was last year or the year before, and I believe each of those were addressed. The transcription, that's a new wrinkle to me even though there's no requirement in the bill that anything is transcribed. But I realize that if...be that as it may, what I want to know, though, is if you talk to the police department of the city of Omaha, they claim they do this a hundred percent of the time. We'll see if they testify here today but as I understand it, they're not opposed necessarily to it because they already do it. And I guess what I'm wondering, is how have they managed when, you know,

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you're expressing some difficulty and I'm...and if there's...

TOM CASADY: Frankly, I don't...

SENATOR BOURNE: ...if there's somebody from the Omaha Police Department that wants to correct me on that, please do. That is my understanding.

TOM CASADY: Well, I don't believe that. I don't believe there's any way that the Omaha Police Department records every custodial interrogation they do. They might be talking like Mr. Mowbray was talking about homicides. I can't think of a homicide since I've been around that we haven't recorded either video or audio. I'm not worried about those cases. I'm worried about the officer that's interviewing this 16-year-old shoplifter at Target that he's had a meeting at the substation. Those are the kinds of things that would just hugely increase our transcription cost because that's the vast, vast majority of the arrests we make. And this bill applies to all custodial interrogations, not just Class II felonies, not just homicides and rapes and robberies but all of them. And that's what I'm concerned about because I know what that will do to our transcription. And you can bet, if there's a tape both the prosecutor and the defendant's counsel are going to want transcripts of that. So the option is not going to exist for us not to transcribe those tapes. We'll be overloaded with them and you won't provide us with the resources we need to do that job. If you did, I wouldn't be here.

SENATOR BOURNE: Thank you.

SENATOR CHAMBERS: Senator Flood.

SENATOR FLOOD: Thank you, Senator Chambers. Thank you, Chief, for your testimony. The 25,000 arrests you mentioned, does that include traffic infractions and speeding tickets?

TOM CASADY: No, absolutely not. That's 25,000 misdemeanors and felonies.

SENATOR FLOOD: Okay, all misdemeanors and all felonies.

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TOM CASADY: Yes.

SENATOR FLOOD: Together. Do you routinely...do your officers routinely record traffic stops with an in-car video camera?

TOM CASADY: No, and the reason we don't...I only have about 20 in-car video cameras. And the reason I don't have more than that is because of exactly this problem. The costs that are associated with it. I'd love to have cameras in all of our cruisers and record all of that video. I'd love to do that. The problem is that it comes at a big cost, not the equipment, maintaining the equipment, replacing the equipment, transcribing the tapes. Can you imagine the work involved in just cataloging and archiving the amount of video that's produced from those in-car cameras? And if someone is here from the Omaha Police Department, ask them about their experience with in-car cameras. How many of them are actually out-of-service at any given time and that's the problem. Like I say, if this bill was limited to the high-end felonies and detentions, I think there have been some improvements made from the version that I saw last year and the year before and that's a move in the right direction. But it still...it is so broad it's going to require one heck of a lot of work that I don't think many people have a concept of this.

SENATOR FLOOD: Thank you.

SENATOR CHAMBERS: Any other questions? Thank you, Chief.

TOM CASADY: Thank you.

SENATOR CHAMBERS: Next. How many more are actually going to testify? Is the number growing from what it was when I first asked? (laughter)

LARRY THOREN: (Exhibit 21) And I'll be quick. Larry Thoren, T-h-o-r-e-n, Hastings Police Chief, testifying on behalf of Police Chiefs Association in opposition to LB 112. I have testified previously on this bill and appreciate the efforts on the direction that the bill is taking. And I would echo Chief Casady's concerns and our major concerns are setting up recording rooms, transcriptions,

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transcription fees, and property management. I'd also like to compliment Attorney Langvardt. It's the first time I heard him say nice things about police officers (laughter) and I'm glad that's on the record. Even if the Legislature or the state provided us with in-car cameras, the maintenance for that and personal recorders for every police officer, we couldn't afford to do it. We couldn't afford to do it as the bill is written. Again, I'm from Illinois originally and I know the problems that occur, and it was mainly in a metropolitan area. And the necessity of...where that law became a necessity because of concerns about death penalty cases. And the Illinois law does cover homicides. It doesn't cover all custodial interrogations so and, again, police chiefs are concerned about the behavior of police officers and that they follow proper techniques and that there's no abuses. What questions can I answer?

SENATOR CHAMBERS: Any questions of Chief Thoren? Chief, I have...oh, go ahead, Senator Flood.

SENATOR FLOOD: Chief, thank you for your testimony today. In your handout dated January 20, 2005, which has been made a part of the record, you say in subparagraph 3 with a bullet point, LB 122 implies a doubt as to the integrity of police officers and may lead to restrictions on voluntary admissions and excited utterances. What types of restrictions do you envision?

LARRY THOREN: Yeah, and thanks for...reminding me of that. In reading the bill and the intent of the bill it says that the best way to determine is is the recording, that somebody freely and voluntarily waived their rights. Integrity is the top character trait for police officers, my belief, in many police chiefs. I'm concerned that there may be some unintended consequences which we've seen from other acts of legislative that may expand this to now start to cover spontaneous utterances, (inaudible) statements, or voluntary statements. If I'm transporting a prisoner from the police station to the county jail and the prisoner then decides, well, yeah, I did do the robbery or I did do the killing. That statement, under this bill, would be admissible but I'm concerned that the interpretation of the voluntariness or the admissibility of that statement may become clouded because of the requirement to record custodial interrogations.

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SENATOR FLOOD: As I read the bill, I don't think that the bill intends the transportation in a patrol cruiser from the scene or from location of the arrest to the police station as a custodial interrogation.

LARRY THOREN: That's correct and we've talked about, you know, unintended consequences that could happen earlier today on some other bills that, you know, how do we know that this isn't going to happen in the future?

SENATOR FLOOD: Oh, so you're envisioning an erosion of some of the techniques that you find helpful today.

LARRY THOREN: I'm sure when the police strict liability was written it wasn't targeted at a participating individual in the car that might not have been the driver that's considered a third innocent party or a situation that a chase did not, you know, I turn my red lights on turn around and that so.

SENATOR FLOOD: That's good. Thank you.

SENATOR CHAMBERS: Any other questions? Then I have one. Chief Thoren, I listened to Chief Casady and it seems to me that your and his opposition is as strong to this bill as if no changes had been made from the last one. Isn't that true?

LARRY THOREN: Our concerns are property management, transcriptions,...

SENATOR CHAMBERS: No, my question is you're still opposed to this bill despite the changes that have been made. Is that true?

LARRY THOREN: Yes.

SENATOR CHAMBERS: So if a fight has to occur then it'd be best to just go back to the stringent form of the bill because making the changes has not made any difference and you still are opposed now even though the changes were addressing some of the opposition expressed last year. Do you at least see the point that I'm making?

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LARRY THOREN: Yes, but you know, you talked about negotiation earlier and compromise and I think we're moving in that direction.

SENATOR CHAMBERS: And the way you'd like to negotiate is I've got six eggs and you've got six eggs, and when we get through you have twelve eggs and I have none (laugh).

LARRY THOREN: Not necessarily (laugh).

SENATOR CHAMBERS: So what form would this bill take that would remove your opposition? Because you said if we gave you all the money then you still couldn't afford to do certain things so you'd still be opposed to the bill.

LARRY THOREN: I would have to hire additional personnel to do transcriptions. Now under the lids which restrict our income for the city, which restricts my budget...

SENATOR CHAMBERS: So, really there's no form this bill could take that would remove your opposition, is there, being completely frank?

LARRY THOREN: Come up with a resolution to the transcription, the extent of having a transcription (inaudible) because that falls on us.

SENATOR BOURNE: I understand.

SENATOR CHAMBERS: That's all that I would have. Any other questions? Thank you, Chief. I almost said senator.

LARRY THOREN: Thank you. I'm not running for office yet (laugh).

SENATOR CHAMBERS: Okay. And I wouldn't want to reduce you on the salary scale either (laugh).

RICK BOUCHER: Mr. Chairman, members of the committee, I'm Rick Boucher. I'm an attorney in Lincoln, B-o-u-c-h-e-r. I'm here tonight as a registered lobbyist for the Nebraska Sheriffs Association.

SENATOR CHAMBERS: Mr. Boucher, excuse me. You said, I'm Mr. Rick Boucher from Lincoln. Then you spelled. What you

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spelled, your name or Lincoln?

RICK BOUCHER: It is, I spelled B-o-u-c-h-e-r. It's my last name.

SENATOR CHAMBERS: Were you spelling your name or were you spelling...

RICK BOUCHER: Yes.

SENATOR CHAMBERS: ...your version of Lincoln?

RICK BOUCHER: No, no, I was spelling my last name.

SENATOR CHAMBERS: Oh, okay, well, the way you placed it in the sentence, you know how lawyers are, I just wanted the record to be clear that you didn't have a different spelling for Lincoln than the rest of us have.

RICK BOUCHER: No, I don't.

SENATOR CHAMBERS: Okay, thank you.

RICK BOUCHER: I was spelling my last name to help the clerk. The Nebraska Sheriffs Association opposes LB 1112 (sic), we think the system is not broken and no fine-tuning is needed. As Mr. Mowbray stated, courts, juries, factfinders, they've been making these decisions for a hundred years. In this particular sense, not only the equipment and transcription, what others have cost, but the time involved whether in using experts or being trained on the equipment, those sorts of things. I think that the sheriffs believe that there will be more challenges, more obstacles to the efficient prosecution of these cases. That the bill goes simply too far and suppresses statements not recorded. I would mention to you that although as the study that you have in front of you reports, whether it's accurate I think the chief has mentioned, he doesn't think it's accurate with regards to Lincoln. There are only four counties of the 93 counties in Nebraska that tape some custodial interrogations and I think that that's most notably Douglas County, Lancaster County. I think Lincoln and maybe Sarpy County, that the other counties simply are not prepared to cover that expense. I think an unintended consequence may well be that officers who have, for

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instance, in Cherry County, let's assume that it's a requirement, that it's passed by the Legislature. An unintended consequence may well be that you may be two hours away from your home base or an hour and a half, that you rather than a person you would visit with, to find out more about a crime whether it's any sort of crime because all crimes are included that you may transport them to that facility just in case something is given to you in response to a question. What were you doing, that sort of thing? So you may have officers transporting them back to a home base. And I think in terms of custodial interrogation, certainly it references no particular definition. There's a couple of phrases that are more highly litigated than custodial interrogation in the criminal law, probably proximate cause. Because custodial interrogation as you'll see as defined, it's not defined, it's really defined as to what the law is at the time the offense arises. We believe the judges and juries are fully capable of making that determination. Mr. Mowbray mentioned video where you can see, feel. I mean, I think it allows for audio. As a lawyer who took an audiotape through federal courts as well as the state courts, I can tell you it just doesn't eliminate all the controversy. Thank you. I'll be happy to answer any questions you might have.

SENATOR CHAMBERS: Any questions of Mr. Boucher? Senator Bourne.

SENATOR BOURNE: I'm a little confused by the Cherry County argument. If I was the chief of the Lincoln Police Department and I wanted to get around this bill, I'd say to the officer, go take him onto the front porch, you know, go outside (laugh) the front door of the building. And there's no requirement that you record them. Take them out to the cop car. You know, I don't understand, so you're saying to me that if you're in Cherry County you're two hours away from the building which is clearly defined, place of detention. You're saying that officer is going to drive them to the nearest police building that's two hours away rather than interrogate them somewhere else and not be subject to the requirements of this bill?

RICK BOUCHER: Sure. I think, first of all, the place of detention although it mentions building is much broader than that. If you'll look on line 26, it says a building, then

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some of these places but not limited to. I think so. I think if you're looking for compliance with the law that if you're not going to risk a case by saying, well, if I interrogate them, if I ask that question and they respond then we get into the five questions, all the justifications, why it wasn't used. I mean, to look at the range of issues, all that you have to do is look at page 3, line 4 through 12 and every issue there results in a hearing and a determination. So I think to avoid all of that time in court and being asked by both the prosecutor as well as the defense lawyer, an officer may well say, I'm going to take the way out. They want all of these admissions or confessions or interrogations to be taped. I'm going to drive this person who may be out-of-state, maybe New Mexico or Maine or any of these places. Rather than risk this, I'm going to take it so they can do an audio or videotape. Yeah, I'm going to transport them two hours to do this just so someone doesn't accuse me of not taping it when I should. I think that will happen.

SENATOR BOURNE: Thank you.

SENATOR CHAMBERS: Mr. Boucher, what you describe is not something that would typically occur anywhere in the state, is it?

RICK BOUCHER: Oh, it is, yes.

SENATOR CHAMBERS: Where they would have to drive two miles...

SENATOR BOURNE: Two hours.

SENATOR CHAMBERS: Oh, two hours.

RICK BOUCHER: Two hours? No, Cherry County is the large...I was using that as the example of the largest county. Yeah, the other day I drove for two hours and went through a half dozen counties.

SENATOR CHAMBERS: So they pick up somebody in Cherry County on a regular basis and drive them two hours. That's why they can't enforce the law. How many people live in Cherry County, seven?

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RICK BOUCHER: There are more cows than people, Senator. I know that but we have some very large counties where officers are not close to their county seat. That's what I'm trying to say.

SENATOR CHAMBERS: And what kind of crimes are committed there? They don't have a lot of homicides, do they?

RICK BOUCHER: All sorts of crimes. Yeah, yeah, they're homicides in many...

SENATOR CHAMBERS: Is there anybody on death row from one of those counties?

RICK BOUCHER: I don't know.

SENATOR CHAMBERS: When was the last time a homicide was committed in one of those counties?

RICK BOUCHER: When you say in one of those counties...

SENATOR CHAMBERS: That you're talking about.

RICK BOUCHER: ...something other than...well, we have the I-80 counties and then we have the counties such as Norfolk, Chadron and those. The...I don't know. But there are counties where law enforcement officers...

SENATOR CHAMBERS: You don't know?

RICK BOUCHER: ...I don't know.

SENATOR CHAMBERS: Well, you were speaking with such...

RICK BOUCHER: I don't know how many homicides have been...

SENATOR CHAMBERS: ...you were speaking in such an authoritative way about all the kinds of crimes that are committed, that's the only reason I asked the question. But I don't want to continue. The only point I was getting to with the question that I asked originally is that what you're describing as something that I don't think is going to occur on such a regular basis that this bill is going to make any difference because the type of offense that might be committed is not even that significant.

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RICK BOUCHER: Well, the type of offense is not covered in the bill. It talks about admissions, confessions, and interrogations.

SENATOR CHAMBERS: So you're not going to be worried about that in those kind of situations.

RICK BOUCHER: No, no, what I would tell you is they will be worried. That's why they directed us to oppose it from the standpoint that they see it as to comply with this law, what do I need to do?...

SENATOR CHAMBERS: If...

RICK BOUCHER: ...I could ask someone but I'm going to transport...they're certainly not going to have the equipment in their vehicle and rather than be criticized whether by a judge or a state senator or...

SENATOR CHAMBERS: In what instances...

RICK BOUCHER: ...a defense lawyer, they're going to say, I'll transport this person back.

SENATOR CHAMBERS: In what instances, Mr. Boucher, does a person have to be given Miranda warnings before what is said can be used?

RICK BOUCHER: Well, in a custodial interrogation, again, it's one of those where the custodial, to the extent...

SENATOR CHAMBERS: Okay. So let's say you have him in the car. If you don't give that person his or her Miranda right in circumstances where they should be given, can anything that person say be used against that person in court?

RICK BOUCHER: Certainly.

SENATOR CHAMBERS: It can?

RICK BOUCHER: Yes.

SENATOR CHAMBERS: If you didn't give them their Miranda rights.

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RICK BOUCHER: If...well, it depends. Are you saying that they are in custody and being interrogated as opposed to...

SENATOR CHAMBERS: Yes. Custodial, if they're in...we're talking about custodial interrogation.

RICK BOUCHER: You're saying, assuming that it's a custodial interrogation.

SENATOR CHAMBERS: When you're under arrest then you have to be given your warnings.

RICK BOUCHER: When you're under...yes, not when you're under arrest. When you're under arrest and being questioned which might lead to...

SENATOR BOURNE: Are you a criminal attorney?

RICK BOUCHER: You know, I do practice criminal law.

SENATOR BOURNE: Sorry to interrupt.

SENATOR CHAMBERS: I understand. I'm trying to get an understanding here. You're telling me...well, let me ask the question a different way. When must Miranda warnings be given and what is the consequence if a person is interrogated without having received those warnings under circumstances where they're required under the law to be given?

RICK BOUCHER: Miranda requires when a person is in custody, that they're not free to leave. That phrase is heavily litigated also but it's also interrogation. When you're asking a question that could lead to a response that might implicate them in a crime.

SENATOR CHAMBERS: So let us say that it is a set of circumstances because I want to get to what your understanding of Miranda is. We're in a set of circumstances where Miranda warnings would be required to be given.

RICK BOUCHER: Okay. We're in...he's in custody and he is being interrogated.

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SENATOR CHAMBERS: And you don't give those warnings and you interrogate that person. Can what that person say be used against that person when you refused to give the Miranda warnings when they were required to be given?

RICK BOUCHER: Not...it would not be used unless they...for purposes...as a last resort for impeachment...

SENATOR CHAMBERS: Now if you gave the...

RICK BOUCHER: ...in the...

SENATOR CHAMBERS: ...person the Miranda warnings and that person said then I'm not going to talk. Then you'd still have to transport them two hours, don't you, if you're going to lock them up?

RICK BOUCHER: Yes.

SENATOR CHAMBERS: That's why I don't even understand what you're talking about.

RICK BOUCHER: Well, no, what I'm saying is the unintended...it may be the unintended risk rather than interrogate them that you transport them because anything they say could be suppressed if it's not videotaped or audiotaped.

SENATOR CHAMBERS: Have you seen cases where if a person is in a police car being taken from point A to point B courts have ruled that person is not free to leave?

RICK BOUCHER: Sure.

SENATOR CHAMBERS: All right. So, okay, I don't have any more questions. Anybody else have a question? Thank you, Mr. Boucher.

RICK BOUCHER: Thank you.

SENATOR CHAMBERS: I forgot I'm serving as Chair and I need to be a little more...I need to facilitate the process a little more than what I've been doing.

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NATHAN COX: My name is Nathan Cox from Plattsmouth. Last name is spelled C-o-x. Thank you very much for giving me this opportunity. I'm testifying against this bill. And I guess just to really cut to the chase, my concern with this bill is the baseball bat to the knee, so to speak, of suppressing the statement outright. I think that it could be used in a number of different fashions that would thwart justice. And that concerns me and I think that's part of the reason why over lo many years we've allowed the system to use all types of evidence and let the judge make decisions as to, for example, the voluntariness and the issues that are trying to be addressed by this bill. The jumping to the, we're going to suppress that whole statement, I think creates problems. I think it creates a situation where potentially officers, hypothetically, could look at a situation and say, if I take them in to the detention center or law enforcement center and something happens to that tape, everything is suppressed. Why don't I just give them the Miranda here in the back of the car and then we just go through with the questioning? There's no recording of it and the purpose is, as stated in this bill, would tend to be thwarted. The next step would then be, well, if officers are doing this then we want to take this one notch up to all custodial interrogation would potentially be suppressible if it's not recorded. Now I understand that there are exceptions that are built into this particular bill but to use, again, an example of a bad scenario. If an interrogation were to be recorded, and let's take the worst case scenario. You got a bad individual that's in law enforcement and this is something that I know Mr. Chambers has brought up the possibility of that existing. If that tape were to not be available through evidence or for some reason was not functioning, even though it was recorded properly, that individual...let's say you have a worst case scenario, a police officer beating an individual and then being arrested and interrogated for that crime. Potentially, that whole statement, any statement that that officer made in that situation would be thrown out if the tape was not producible at the time of the motion to suppress. And I'm just saying worst case scenario, horrible situation that we all hope never happens. But it's a possibility. I think that the best case scenario is is that we leave these decisions in the hands of the very able judges and attorneys and juries to look at the testimony, cross examine those officers to

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try and make sure that we get the truth out of them if that's a concern and address it in that fashion. Or, I see that I'm out of time. Thank you.

SENATOR CHAMBERS: Any questions? Senator Flood.

SENATOR FLOOD: Thank you, Senator Chambers. Briefly, you raised the point that I find very interesting. If the tape that had been recorded is not available at trial or let's assume for a second that in the worst of all situations an officer forgot or for whatever reason did not get the Miranda warnings right or there's something that's wrong on there. And then that officer was to hide the tape or not produce the tape or in a similar situation where the tape machine breaks and they don't fix it for a long time. If this were passed into law, and I know that you oppose it. Would you see any value to requiring a law enforcement agency that has a recording machine to report a nonfunctioning recording device to an independent third party or the state police or some agency so that that can be on record so that if a homicide occurs after the tape begins not to work properly or the recorder so that it can be on record while it's in a period of maintenance? Do you understand where I'm going with that?

NATHAN COX: I do understand. It's an additional step of monitoring to make sure that if something isn't functioning...again, tell me if I'm misunderstanding...

SENATOR FLOOD: Yes.

NATHAN COX: ...that if it's not functioning that it be reported so that that can be monitored.

SENATOR FLOOD: Right.

NATHAN COX: Do I see any benefit of it? There are certainly arguable benefits and, again, don't get me wrong. I very much...I'm in favor of law enforcement officers recording and I encourage my officers to record but, again, as I characterized this, a baseball bat to the knee with just suppressing outright. I can't use anything. And so if we put another obstacle, for example, like what you're saying, of now you've got to also additionally report to this third agency and if something goes wrong with that,

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that's another issue for defense council to say, suppressed, outright suppressed. It's gone. There's no use of that particular testimony. That makes me very, very nervous.

SENATOR FLOOD: Can you see where in a situation that you do have a homicide in your area and for whatever reason the machine malfunctions on that night when the custodial interrogation of the prime suspect takes place. And then you have those questions raised at a court hearing. Had you been able to report that or been required to report that it might provide a little bit more protection for a law enforcement agency of the evidence that's not there.

NATHAN COX: I think that the scenario, though, is is that they should have reported that and if they're continuing on with their interrogation even though that piece of equipment is malfunctioning and they've reported it as being malfunctioned, I see potentially judges saying, it's not reasonable for you to have gone this period of time without either fixing, replacing, and particularly in our day where you have digital recorders. I've heard people say, well, there's no reason that somebody shouldn't have a digital recorder because, you know, they're everywhere. You can get them and you can use them. Well, now the reasonableness of not available by judicial ruling could very well just go right out the window. A judge saying, I find that digital recorders are easy to locate and everybody should have them, done.

SENATOR FLOOD: Thank you very much.

NATHAN COX: Thank you.

SENATOR CHAMBERS: Senator Friend.

SENATOR FRIEND: Thank you, Senator Chambers. Mr. Cox, just out of curiosity, I'm in no position to be...my intent is not to bargain or try to figure out what, you know, what would make...I would have to sit down with Senator Bourne and others on the committee to do that. But the thing that occurred to me, if you took the reasonable excuses and the work that they did over the interim and dumped it and then said for homicides, some of the folks that brought that up earlier. I mean, what goes through your mind when I throw a scenario out like that where you say, look, now we're in

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this mode? We're going to tape every potential, you know, homicide...

NATHAN COX: Homicide case.

SENATOR FRIEND: ...yeah. But the reason, again, keeping in mind the reasonable excuse is out the window. I mean, what...I know that's putting you on the spot and I don't want you to...I'm not going to hold you to anything here. I just wanted to...I'm trying to sort this out in my...

NATHAN COX: And I appreciate the opportunity to address that. Definitely in a homicide case the recording of a suspect as he or she is being questioned is definitely beneficial, and I want to say that straight up. It's definitely beneficial. But do we want to create a scenario where because of an officer either through ignorance, some type of problem not recording a particular statement, saying in this murder case now none of this can be used at all. Jury can't consider it. Judge can't look at it and say, we think that the officer was telling the truth that he waived voluntarily. We don't believe that the officer was telling the truth. We believe the defendant. None of that can even be considered by judge or jury because since there's a lack of that particular tape under these scenarios we don't get to even look at the statement that was made or if we believe the officer or the defendant in that type of situation. And that's why I think that it does such violence to the system by saying all of this categorically is suppressed outright. If this was...if the intention of the bill and, again, I...

SENATOR CHAMBERS: Mr. Cox, could you kind of zero in. It's about...

NATHAN COX: Thank you. I will. I'll just leave it at that. Thank you, sir.

SENATOR CHAMBERS: Any other questions? Thank you.

NATHAN COX: Thank you, sir.

MIKE BUTERA: Mr. Chairman, members of the committee, my name is Mike Butera, B-u-t-e-r-a, and I'm the captain in charge of the Criminal Investigation Bureau of the Omaha Police Department. I am here today to respectfully oppose

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this bill for several reasons. First, the bill would absolutely result in considerable cost to our department at a time that we can really least afford it with budget considerations. Some examples that I'd like you to consider. Personnel costs would be extremely high. I know that Chief Casady mentioned a few things and so in an effort not to be redundant, in Omaha alone we made over 47,000 criminal arrests in 2004. Those were actual arrests. To consider the fact that there were also a number of interviews and interrogations that did not result in arrest, that number would be considerably higher. According to this bill, not all obviously would result in a taped interview but there would be tens of thousands that would. Custodial bookings alone in Omaha, if you just looked at last year alone, custodial bookings would result in excess 48. and a few percentage points above 48 new tapes or new interviews that would need to be transcribed per day for 365 days a year. That would mean tens of thousands of tapes and we would have to hire an unrealistic number of people to keep up. From an equipment standpoint, we would need to buy hundreds of tape recorders. A \$50 tape recorder would not hold up for a month with this type of volume so we're talking about fairly extensive and expensive equipment. With technology changing today, things going to digital, we are in the process of transferring our VHS audio-based systems to digital now and it's costing us hundreds of thousands of dollars just to do that, let alone with the additional burden. The cost of storage, the cost of tapes, equipping rooms in excess of \$5,000 per room. Again, there's no stipulation between misdemeanors and felonies and that's where I think that a major issue in this bill concerns us. Also, with regard to place of detention, store security office, some of the places that Chief Casady mentioned would also come into play as being under the custody of the police department which will require a tape. We're not philosophically opposed to the concept of audio videotaping. Currently, we have a policy in place to do that on all Class II felonies or greater. Those felonies below Class II, every attempt is made according to the policy possible to get that done based on availability of recording equipment, rooms, and those type of issues. There is a financial cost associated with this bill, obviously, the result of money diverted from other law enforcement purposes to fund these requirements as well as operational time. Thank you.

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SENATOR CHAMBERS: Any questions? Thank you. Next.

JIM PESCHONG: Mr. Chairman, members of the Judiciary Committee, my name is Jim Peschong, P-e-s-c-h-o-n-g. I'm here to testify on behalf of the Police Officers Association of Nebraska. We are opposed to LB 112 unless it provides the necessary funding to offset the associated cost. This bill brings with it a substantial cost to city and counties across the state. This is not as simple as purchasing a cheap recorder, recording an interview, and forgetting about it. Hardly ever will this ever end up being placed on a shelf in an evidence room and never be thought of again. While one can certainly argue the bill does not require that a recording be transcribed, the reality of it is it's inevitable. Case managers, prosecutors, defense attorneys, judges, juries will all scrutinize the recordings. In order to effectively do this the recordings are going to have to be transcribed. According to the Nebraska Crime Commission, there were 93,195 people arrested or cited for a crime in 2003. This equates to a detention. We can probably also all agree that law enforcement detains far more people than they arrest or cite. A person can be detained for investigative detention while the police are trying to sort things out. An example of this may be a drive-by shooting incident involving a carload of people. The vehicle gets stopped, everyone gets transported to a police facility. Since there is a detention, the police would need to record the pending interviews. However, maybe only one person ultimately gets arrested or cited for the offense out of the carload of people. But there may be four, five, six, maybe even seven tapes as a result of the detention. Let's say for an argument's sake that the Lincoln Police Department's typing staff is reflective of other law enforcement agencies across the state with regards to skill sets and personnel costs. Our personnel cost for a first draft average statement to be typed is \$15.95. If a recorded statement is taken from 93,195 people and transcribed the cost for the first draft of a transcript would be \$1.5 million. The costs do not stop here. There are also costs for evidence handling, additional office and work space needs for the increased workload, additional officers' time to clarify inaudibles, redacting statements. With tight budget constraints, administrators and elected officials are already struggling trying to find ways to keep their

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personnel available so they can respond to citizens' and community needs. A mandated recording will require a substantial personnel workload increase to our operations, personnel also associated with these recordings at all levels. To record it, secure it, transcribe it, edit it, and at some times they may have to redact it. Thank you for your consideration. I'll be happy to answer any questions.

SENATOR CHAMBERS: Any questions? I have one.

JIM PESCHONG: Okay.

SENATOR CHAMBERS: Which police force are you connected with?

JIM PESCHONG: Lincoln. But I'm testifying in behalf or with the Police Officers Association.

SENATOR CHAMBERS: But your testimony is the same as that of your chief.

JIM PESCHONG: Yes, a little bit.

SENATOR CHAMBERS: Well, the examples you gave were from Lincoln, I thought.

JIM PESCHONG: Well, those are the ones that I'm familiar with.

SENATOR CHAMBERS: So they sent somebody to testify who's going to primarily talk about his experiences in Lincoln though he's talking on behalf of officers who don't have anywhere near the same set of circumstances?

JIM PESCHONG: You know, it's really hard to get your hands around this. I'm on the Police Officers Association's board of directors and stuff...

SENATOR CHAMBERS: Okay, I won't force you into that. But let me ask you this. With the number of recordings that are taking place now in Lincoln,...

JIM PESCHONG: Yes.

SENATOR CHAMBERS: ...is every one of those transcribed

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right now, those that are taken?

JIM PESCHONG: Yes, yes.

SENATOR CHAMBERS: And how many would you say roughly a year are?

JIM PESCHONG: Two thousand forty-seven for the year of 2003.

SENATOR CHAMBERS: And was every one of those used in a prosecution?

JIM PESCHONG: Can't tell you that, that I don't know.

SENATOR CHAMBERS: A lot of them wouldn't be, would they? Does every one of those cases go to trial?

JIM PESCHONG: No, they do not.

SENATOR CHAMBERS: And you think this would then make every one of them go to trial that is recorded.

JIM PESCHONG: Well, the thing is, just because it doesn't go to trial, a prosecutor or a defense attorney may wind up spending a lot of time reading that transcript and going through that transcript to decide, you know, do I wind up pleading my...

SENATOR CHAMBERS: If the law doesn't require it to be transcribed, what would it take to compel you to transcribe it if somebody wanted it transcribed? Who is in a position, in other words, to come to your police department and say, you interrogated this person; I want a transcription of it. Does the law require you to respond and transcribe it?

JIM PESCHONG: I'm familiar with an incident that happened a few months ago...

SENATOR CHAMBERS: No, I mean this law.

JIM PESCHONG: ...does it...

SENATOR CHAMBERS: ...under this, would it...who can demand that you transcribe one of those recordings?

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JIM PESCHONG: The prosecutor can come to us and say, if you don't transcribe it, I don't file the charge.

SENATOR CHAMBERS: That's not pursuant to this law, though, is it? If the law doesn't require it, then you can't blame that on the law, can you?

JIM PESCHONG: That's the reality of the situation.

SENATOR CHAMBERS: Does that happen now?

JIM PESCHONG: Yes, it does.

SENATOR CHAMBERS: Then this is not going to aggravate what happens now, is it?

JIM PESCHONG: Yes, it will. If you require that I have all of these tapes in my evidence room, it's going to compound the problem that I got to wind up transcribing them.

SENATOR CHAMBERS: And you think every...a prosecutor is going to come to you in a misdemeanor case knowing the cost of transcription and not needing necessarily even what came out of the interrogation and will say, well, since you got the tape I want you to transcribe it.

JIM PESCHONG: I could...Senator, I can tell you within the last couple of months a prosecutor's office went to a law enforcement agency in this state who had indicated that they could no longer afford to transcribe their tapes and they were told that until they transcribed their tapes they weren't going to wind up having charges filed on any of their cases where they had transcriptions.

SENATOR CHAMBERS: So the remedy is already there and that is happening without this bill, is that true?

JIM PESCHONG: Yes, it is, and it will be compounded by this because we'll have far more tapes. As opposed to 2,000 tapes in our evidence room we'll have thousands, tens of thousands...

SENATOR CHAMBERS: Well, if this...here's where you're losing me.

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JIM PESCHONG: Okay.

SENATOR CHAMBERS: If you've got a police department that can't transcribe ten tapes now,...

JIM PESCHONG: Correct.

SENATOR CHAMBERS: ...what difference does it make if they've got a million tapes? They can't transcribe ten. I don't think I'm getting through so I don't have any more questions. Does anybody else? Thank you.

JIM PESCHONG: You're welcome.

SENATOR CHAMBERS: Now do we have neutral testimony? I'm going to say like Dizzy Dean used to say, any "neutral" testimony...oh, no, I'd like the referee to go to a "neutral" corner. Is this "neutral" testimony?

DON KLEINE: (Exhibit 22) This is "neutral", yes.

SENATOR CHAMBERS: All right.

DON KLEINE: Good evening (laughter). My name is...

SENATOR CHAMBERS: Is it...

DON KLEINE: ...my name is Don Kleine, K-l-e-i-n-e. I've been an attorney for 27 years. I've been a deputy county attorney prosecutor in Douglas County, been a criminal defense attorney for ten years in Douglas County. I'm currently Assistant Attorney General here in the state of Nebraska but I'm testifying here today as the president of Nebraska County Attorneys Association regarding this bill. And our position is that of neutral. There are some positions within the association pretty much every which way, and so but I think it's important that we testify as an association. I brought with me today laws that have been referred to previously. There are similar laws in other jurisdictions; some by legislative act, some by court edict. I think three of the states, Minnesota, Alaska, and Massachusetts the courts have directed something to be done with regard to taping custodial interrogations. I don't think there's any question that from the court's perspective

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whether you're the judge, whether you're the defense attorney, whether you're the prosecutor, or in speaking to jurors after you try a case that the preference is you should be able to have this recording to listen to as evidence as to what took place during a custodial interrogation. There isn't any question. That's the best possible evidence. You know, as I said, in talking to judges that have to make the decision with regard to admissibility in a pretrial hearing, in regard to jurors, with regard to credibility or other issues with regard to statements that have been made, there isn't any question that the taping and that evidence that's admitted at trial or before the factfinders is the best type of evidence to have. The concerns are, the problems are costs as had been previously stated by agencies and that's something that's come up in the course of the associations talking about the problems with this particular bill would be costs and the fact of the constitutional safeguards are there. The Miranda decision is there. Is this going a step that...there's not a constitutional requirement that this be taped but taking that step, is that absolutely necessary? When judges still have to make the determination whether it's taped or not, if the Miranda safeguards have been met and the (inaudible) and the safeguards have been met. So those are the concerns and that's what I wanted to voice today.

SENATOR CHAMBERS: Thank you, Mr. Kleine. Any questions? Thank you very much.

DON KLEINE: Thank you.

SENATOR CHAMBERS: Senator Bourne. Then I'm returning the committee to Senator Bourne so that he can proceed with our...

SENATOR BOURNE: Thank you. That will conclude the hearing on LB 112 and the hearings for today. Thank you.